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Mr. Fish and the Alabama Claims

A CHAPTER
IN
DIPLOMATIC HISTORY

BY
J. C. BANCROFT DAVIS

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THIS little sketch was written early in the last summer. Illness and absence in Europe have deferred its publication until now. During the short time which intervened, HAMILTON FISH, the principal actor in the events which it aims to describe, passed away, leaving the history of his public career as a rich legacy to his countrymen. As it will be seen that my knowledge of some of those events was necessarily derived from him, it is proper to say that he did not suggest this publication, nor are his representatives responsible for it.

J. C. BANCROFT DAVIS.

WASHINGTON, *September* 30, 1893.

MR. FISH AND THE ALABAMA CLAIMS

On the 4th day of January, 1878, a letter from me appeared in the "New York Herald" on the subject of "Mr. Sumner, Mr. Motley, the Alabama Claims and Their Settlement," a copy of which will be found in the Appendix. In that letter, commenting upon Mr. Sumner's speech in the Senate upon the Johnson-Clarendon Treaty for the settlement of those claims, I said: —

"Lest I should be supposed to misrepresent the doctrines of this speech, which was the beginning of the differences between Mr. Sumner and the Administration, I quote from it. Under the heading 'The Case against England' he said: 'At three different stages the British Government is compromised: *first, in the concession of ocean belligerency, on which all depended;* [1] secondly, in the

[1] All the italics in the quotation are mine.

negligence which allowed the evasion of the ship in order to enter upon the hostile expedition for which she was built, manned, armed, and equipped; and, thirdly, in the open complicity which, after the evasion, gave her welcome, hospitality, and supplies in British ports. Thus her depredations and burnings, making the ocean blaze, all proceeded from England, *which by three different acts lighted the torch.* To England must be traced the widespread consequences which ensued.'

"What those widespread consequences were he set forth in detail under the heading 'The Extent of Our Losses.' He estimated 'the loss sustained by the capture and burning of American vessels' at 'about $15,000,000.' The loss in the carrying trade he put at $110,000,000 on the authority of 'a statistician.' Then he said that, large as these losses were, there was another chapter where they were larger far, — 'the national losses caused by the prolongation of the war, and traceable directly to England,' and he clinched the state-

ment by saying, 'If through British intervention the war was *doubled in duration or in any way extended, as cannot be doubted,* then is England justly responsible for the additional expenditure to which our country was doomed;' and he stated the cost of the suppression of the Rebellion at $4,000,000,000, thus leaving the calculation of this item plain to the youngest schoolboy.

"It is not necessary to waste words to prove that such a doctrine, if supported by the Administration, would have shut the door against future negotiation; for it was manifestly for England's advantage to incur the risk of a war with the United States rather than adjust the Alabama Claims by the admission of such a pretension. It may also reasonably be supposed that a statesman of Mr. Sumner's experience must have foreseen that England would so regard it, and must have intended to put a stop to all negotiations.

"This speech was delivered and made public without consultation with the President and the Secretary of State,

and was as much a surprise to them as to anybody. Nevertheless, from the intimate relations between the Secretary of State and the senator, the world would probably have assumed, and would have been justified in assuming, that the latter had spoken by authority. The Administration was therefore forced at once to decide what should be its attitude toward England on that question. This was all the more important since, before the speech was delivered, it had been decided, on Mr. Sumner's request, to send Mr. Motley to England.

"It is no disparagement to Mr. Motley to say that, but for Mr. Sumner's influence, he probably would not have been selected for this responsible post."

After the lapse of fifteen years, volume iv. of the "Memoir and Letters of Charles Sumner" appears, in which nearly three chapters are devoted to a discussion, dissection, and attempted refutation of the statements in that letter. The main issue between us is stated by Mr. Sumner's biographer as follows: —

"Nine years after the speech was made,

and four years after Sumner's death, Mr. J. C. B. Davis, in an attempt to cover up the real cause of the senator's removal from the head of the Committee on Foreign Relations in 1871, set up that this speech two years before was 'the beginning of the differences' between him and the Administration; that it was 'a surprise' to the President and the Secretary of State; that the senator in making it 'must have intended to put a stop to all negotiations;' and the two positions of the speech, to which such reference is made, were those upon the British proclamation of belligerency and our national claims. All this is pure fiction." [1]

He further says that the President and Secretary of State, instead of expressing surprise, or disapproval, were in accord with Senator Sumner, and commended the speech; and he affirms that Mr. Sumner's position as to the proclamation of belligerency was the position of the United States as maintained by General Grant, by Mr. Fish, and by me at Geneva.[2]

[1] *Memoir and Letters of Charles Sumner*, iv. 393.

[2] *Memoir and Letters*, iv. 401.

This emphatic denial has induced me to reëxamine the evidence. There is little or nothing that is new in Mr. Pierce's book, and the reëxamination satisfies me that I was entirely correct in my former statement. The difference between Mr. Sumner and Mr. Fish was vital. Mr. Sumner knew it; struggled to secure official support for his own views; and failed. President Grant and Mr. Fish never accepted Mr. Sumner's views about the British proclamation of belligerency. The gigantic and untenable national claims set up by him were never supported by them. These claims gave no end of trouble in the negotiations for the Treaty of Washington, and they came near to putting an untimely end to the proceedings at Geneva. This being established, it follows that the statements styled "pure fiction" by Mr. Sumner's biographer are veritable historic truth.

In making this reëxamination, many things which have gone into history (some not yet made public) were passed in review. I have no wish to continue the old controversy, except so far as may

be necessary in developing the story of the settlement of the Alabama Claims. When all the evidence about that controversy is before the public, history will deal justly with it. My present purpose is to show to whose wisdom, prudence, and self-restraint the nation owes its delivery from the dangerous position in which it was placed by Mr. Sumner's speech.

Mr. Pierce also takes issue with me on other points which are historically unimportant. I am content to leave them to the judgment of history on the evidence already before the public, without diverting attention from the greater issues now to be discussed.

One of the first official acts of President Grant was the sending to the Senate the names of the members of his Cabinet for confirmation. First on the list was Elihu B. Washburne, of Illinois, as Secretary of State. There can be little doubt that Mr. Sumner desired this post, and that the nomination of Mr. Washburne was a personal disappointment to him.

On page 373 of volume iv. of Pierce's "Memoir," it is said, in a footnote, that the statement by General Badeau "that Sumner hoped to be Secretary of State in the Cabinet of President Grant" was a "fiction;" that it had "no support in trustworthy evidence." But on page 372 of that volume, we find Sumner saying, on the day after the election of General Grant: "Had Mr. Lincoln lived, I think I should have been obliged to determine then if I would supersede Mr. Seward. . . . Nobody has ever heard me say that I would accept any place out of the Senate, if it were offered to me. I admit, however, that my country has a right to determine where I can work best." And on page 371 of the same volume, Mr. Pierce writes to Mr. Sumner, about two months later: "By your service in the Senate you are to live in the history of the country. Is it not best to remain there?"

Thus it is quite clear that Sumner contemplated the possibility of entering Grant's Cabinet as Secretary of State. The further statement by Badeau that he

"hoped" to be there is also quite within the range of probabilities. If such was his hope, many things which subsequently took place are explainable on principles which, in human life, often connect motive with action.

Sumner's career prior to that time had endowed him with many of the necessary requirements to fit him for the place. In early life he had visited Europe, bearing letters which opened to him some of the best of the literary and political society of France and of England. The good use which he made of his advantages gave him an extensive acquaintance in those classes, such as few of his countrymen enjoyed. Returning home, the anti-slavery excitement which led up to the civil war carried him into political life. In 1850, a coalition of Democrats and Free-soilers secured the political control of Massachusetts, and in the division of the offices he was elected a senator from that State for the full term commencing on the 4th of March, 1851. Until the war broke out he was in a hopeless minority; but when the secession of the South-

ern States took place, he became the Chairman of the Committee on Foreign Relations. Although he cannot be said to have ever been in any sense a leader of the Republican party on great questions of internal policy, there is no doubt that the Senate and his committee largely deferred to him on foreign questions. Notwithstanding his intelligence and his education, however, he was not fitted by nature to assume the responsibilities of the office of Secretary of State. Well informed, agreeable in social life and used to its ways, he was, in public life, irascible, self-asserting, arrogant, and incapable of bearing contradiction. Add to this that he was full of conceit, devoid of humor, and without tact, and we may fairly say that he was unfitted for assuming the responsibility of advising the national policy in foreign matters, and of guiding an Administration in carrying it out.

Mr. Washburne held office for one week, and resigned to become the Minister to France.

On the 10th of March, the day before Washburne's resignation took effect, President Grant wrote and mailed a personal letter to Hamilton Fish at New York. In it he said that it had been his purpose to nominate Mr. Fish to the Senate as Minister to Great Britain, but that circumstances had led him to change his plans. Washburne's resignation had determined him to invite Mr. Fish to become the Secretary of State. This letter reached Mr. Fish at midday on the 11th, and he at once telegraphed, declining the offer; but before the telegram reached the President the nomination had been sent to the Senate. It was confirmed at once; and a messenger was then sent to him on the part of the President, urging his acceptance. He yielded, and two days after the confirmation he wrote Sumner: "I hoped that I could rely upon your friendship and your experience and ability, for your support and aid to supply my manifold deficiencies. My name was sent to the Senate without my knowledge. I had declined by telegraph to a letter tendering the place." [1]

[1] *Memoir and Letters*, iv. 379.

Few men in the country were better fitted for this place by training, by experience, and by qualities of mind and character than Hamilton Fish. He was of an old New York family, that had been distinguished in public life in colonial times. His father had served in the continental army, and was the intimate friend and the executor of Alexander Hamilton. In early life Mr. Fish had been at a French school in New York, where he acquired a knowledge of that language. Graduating at Columbia College with the highest honors, he identified himself from early manhood with every effort for its prosperity and growth. He was respected and beloved in his native city. He was a liberal giver to its charities and active in its public works. He was for many years a member of the Diocesan Convention of the Episcopal Church in New York, and represented that diocese in several successive General Conventions of that church. He early interested himself in politics, and, although a Whig, was elected a member of Congress from a Democratic district in

the city of New York. He was afterwards Lieutenant-Governor, and subsequently Governor, of the State of New York. In 1851, he was elected a senator from that State for the same term for which Mr. Sumner was first chosen in Massachusetts.

While in private life he had some qualities in common with Mr. Sumner, — uprightness, scholarship, extensive reading, a taste for the companionship of his fellow-men, and unusual conversational powers, — in public life he was in some respects his opposite. He was not an orator, and rarely spoke in the Senate. In his dealings with others he was just, patient, and even tempered; a good listener; modest and retiring; kindly and sympathetic; and carried his own measures by convincing others of their justice.

The third volume of the "Memoir" of Mr. Sumner states that Mr. Sumner "met a welcome, from the first, in the houses of the New York senators."[1] Mr. Fish, at that time, could have had little in common with Sumner's political

[1] *Memoir and Letters*, iii. 264.

views and affiliations. He was a Whig, of the conservative type, having no sympathy with efforts to upset that party, or to absorb it into another organization. He was, however, a man of the world, with strong social instincts, and he did not let his political faith control his social relations. It is quite true that an intimacy of a friendly character soon sprang up between the junior senators from Massachusetts and from New York.

While they were both members of the Senate, Brooks struck the cowardly blow which aided so much in uniting the Republican party, and in thus shaping the destinies of the country. Mr. Fish was one of the first to go to Sumner's bedside, and one of the last to leave him. Day after day he sat with him, cheering him as best he could. The relation between the two men was worthy to be called by the sacred name of friendship, and so remained until terminated by the acts of Mr. Sumner.

This relation subsisted, despite wide differences of opinion on many public questions, and was unchanged when

President Grant invited Mr. Fish to become the Secretary of State. Mr. Sumner was at that time Chairman of the Senate Committee on Foreign Relations, which necessarily brought him into frequent touch with the Secretary of State and with the President.

Mr. Fish came to Washington very soon after his confirmation, and assumed charge of the Department of State. In about four weeks the list of proposed diplomatic and consular appointments was completed. It was sent to the Senate, "with Mr. Motley's name" as Minister to Great Britain "at the head of the list." [1]

When General Grant became President, the claim against Great Britain (already referred to), for injuries received by the United States on the high seas during the civil war, was a leading question in foreign politics. This claim, as advanced by Mr. Seward, rested upon the Queen's proclamation of belligerency, which he claimed was an act entirely

[1] *Works of Charles Sumner*, xiv. 270.

unauthorized at the time of its issue by any recognized canon of international law. It was further supplemented, he contended, by the belligerent acts of the Confederate cruisers upon the high seas in destroying American vessels and commerce. On this basis claims had been put forward on behalf of the owners of American vessels and their cargoes, so destroyed upon the high seas. The negotiations respecting these claims had resulted in the treaty known as the Johnson-Clarendon Convention. That treaty was before the Senate for its constitutional action when General Grant became President.

At what time a neutral power would be justified in recognizing a civil conflict in another state as rising to the dignity of war, with the rights and duties which war imposes, was at that time a practical question in the United States. "An insurrection in Cuba was in progress when the President entered on his term, and Spain was engaged in the effort to suppress it."[1] This insurrection might

[1] *Memoir and Letters*, iv. 401.

expand into a civil war, and it might become necessary, on the soundest principles, and in the best interests of the United States, to recognize a state of war.

As early as January 26, 1869, Sumner wrote to Richard H. Dana, Jr., that the consideration of the treaty would "go over to the next Administration," and would "probably become one of the greatest international litigations in history." [1] He said, in committee, a few days later: "We begin to-day an international debate, the greatest of our history, and before it is finished, in all probability the greatest of all history." [2] In this "greatest" of debates Mr. Sumner made the speech already referred to, which, as coming from the Chairman of the Senate Committee on Foreign Relations, was assumed in England to represent the ideas and purposes of the new Administration.

This speech, I said in my letter to the "New York Herald," and I repeat, was the commencement of the differences

[1] *Memoir and Letters*, iv. 369.
[2] *Memoir and Letters*, iv. 384.

between Mr. Sumner and the Administration.

The senator, the Secretary of State, and the President were all in accord in insisting that the Queen's proclamation of belligerency of the 13th of May, 1861, was issued indiscreetly and prematurely, — at a time when, in fact, there was no condition of belligerency which called for or justified it.

Mr. Sumner was, however, of the opinion that, as the British Government by this act "lighted the torch" which destroyed American commerce, the act formed a substantial basis on which to rest a claim for pecuniary damages. He practically admitted that existing canons of international law furnish no warrant for his position; and he at one time proposed to meet this difficulty by "remodelling maritime international law."[1]

On the other hand, the President and the Secretary of State desired to have the claims presented upon undisputed canons of international law, which recognize the right of every power, when a

[1] Sumner to Motley, *Memoir and Letters*, iv. 410.

civil conflict arises within another state, to define its own relations and those of its citizens towards the parties to the conflict.

The difference between the two positions is too broad and manifest to require further statement. That of Mr. Sumner pointed towards a war with England in the future; that of the Administration led up to the peaceful settlement which was afterwards made.

The President and the Secretary of State were both surprised by Mr. Sumner's speech. They could not anticipate that, as Chairman of the Committee on Foreign Relations in a Republican Senate, he would attempt to commit the new Republican Administration to positions of such vital importance, without its previous knowledge and consent.

About the time this speech was made, Mr. Motley, having been confirmed by the Senate, was commissioned as Minister to England. He was appointed, as I have already said, at the request of Mr. Sumner.

Mr. Sumner's biographer says in

volume iv., in regard to Motley's appointment, that "the selection was the President's without pressure from any quarter;"[1] that Sumner's "part in making it was a minor one;"[2] that "so far as appearances go, it would have been made without a word from him;"[3] that it was "represented, but not truly, that the appointment was due to Sumner's 'influence and urgency,' with the intimation that otherwise it would not have been made, and the Administration would not have been misled," referring to Mr. Fish's letter to Mr. Moran of December 30, 1870, as authority for the representation;[4] that Motley "never supposed himself indebted to him [Sumner] for the appointment;"[5] and that Sumner was not "the chief promoter of Motley's success."[6] No authority is referred to in support of these remarkable statements, some of which profess to be made in denial of a public official statement by Mr. Fish to the contrary.

[1] Page 380.
[2] Page 380.
[3] Pages 380, 381.
[4] Page 381.
[5] Page 381.
[6] Page 381.

There was no reason, at that time, why Sumner should not ask for Motley's appointment; none why he should not urge it. Motley had all, and more than all the necessary equipment for the place. He was widely and favorably known in Europe, he was distinguished, respected, and admired at home. There was every reason to anticipate for him an honorable and useful career in London. No one could have then imagined that that would happen which did take place later. It is not easy to understand why Sumner should have desired to avoid the charge of urgency in Motley's behalf; or why his biographer should disclaim for him all interference in the matter. Still, as the issues are made, it is but just to inquire what the fact was.

Mr. Sumner himself, in his collected works, has furnished the means to meet and answer a part of these statements. Mr. Fish, in an instruction to Mr. Moran, then Chargé d'Affaires of the United States at London, dated December 30, 1870, had stated that Motley's appointment was due to Sumner's influence and

urgency. This paper was sent to the Senate and made public by that body shortly after its date. Mr. Sumner thereupon prepared a reply, in which he said:

"By way of aspersion on Mr. Motley and myself, the country is informed that he was indebted for his nomination to 'influence and urgency' on my part. Of the influence I know nothing; but I deny positively any 'urgency.' I spoke with the President on this subject once casually on the stairs of the Executive Mansion, and then again in a formal interview. And here, since the effort of the Secretary, I shall frankly state what I said, and how it was introduced. I began by remarking that, with the permission of the President, I should venture to suggest the expediency of continuing Mr. Marsh in Italy, Mr. Morris at Constantinople, and Mr. Bancroft at Berlin, as all these exerted a peculiar influence and did honor to our country. To this list I proposed to add Dr. Howe in Greece, believing that he, too, would do honor to our country, and also Mr. Motley in London, who, I suggested, would have an influence there be-

yond his official position. The President said that nobody should be sent to London who was not 'right' on the Claims question, and he kindly explained to me what he meant by 'right.' From this time I had no conversation with him about Mr. Motley, until after the latter had left for his post, when the President volunteered to express his great satisfaction in the appointment. Such was the extent of my 'urgency.'" [1]

This reply Sumner caused to be privately printed. He circulated it among his friends with strict directions to secure its confidential character; but he seems to have lacked the courage to make it public. After his death a friend caused it to be printed, and it now forms a part of his collected works.

The paper, as it stands there, is preceded by a note in which is said: "With the failure of an opportunity for the presentation of the proposed statement in the Senate, Mr. Sumner's indisposition to appeal to the public returned with increased strength, manifested, after print-

[1] *Works of Charles Sumner*, xiv. 269, 270.

ing, by limiting the communication of copies to personal friends, with the inscription, 'Unpublished, — private and confidential, — not to go out of Mr. ——'s hands.'"[1]

To so much of Mr. Pierce's statement as implies that Sumner had little or nothing to do with Motley's appointment, it is enough to cite Sumner's own words as an answer. He says that he did ask for it; he virtually admits that he did ask for it more than once; he confesses that he felt enough interest in it to buttonhole General Grant about it on the staircase; and he states, without qualification, that he also attempted to influence the disposal of four other of the leading foreign appointments in favor of four other friends.

To so much of the statement as denies that there was urgency or pressure from any quarter, we have, in the first place, the statement to the contrary already referred to in the instruction to Moran of December 30, 1870. This instruction was carefully prepared by Mr. Fish, was

[1] *Works of Charles Sumner*, xiv. 252.

submitted by him to the President, was laid before the Cabinet and approved there, and, after it had passed through this ordeal, was engrossed, signed, and forwarded to London. It must be assumed that each and all of these officials assented to the statement that Motley "was originally indebted for his nomination" to Sumner's "influence and urgency."

Still further, General Grant is represented, in Holmes's Life of Motley, as saying, with reference to his diplomatic appointments: "When I was making these appointments, Mr. Sumner came to me and asked me to appoint Mr. Motley as Minister to the Court of St. James. I told him I would, and did." [1]

The irresistible conclusion to be drawn from these facts is fortified by the declaration of the President that it had been his purpose to appoint Mr. Fish as Minister to England, but that Sumner had been urging Motley, and he had promised to appoint him. During the discussion of the "tenure of office" law, the

[1] Holmes's *Memoir of Motley*, 179.

President became impatient and dissatisfied with Sumner's course. He then said to Mr. Fish that he was thinking of naming Mr. Jay to London; but Mr. Fish said that, while it would have been only justice to send Motley to Vienna, from whence he had been improperly withdrawn, still the promise to Sumner should not be disregarded. The President concurred, and the appointment was made.

In view of all this it is plain that Mr. Sumner's feeble denial of the charge of urgency in Motley's behalf has its foundation in a failure of memory; and that his biographer has been led on his authority to state as fact that which is pure fancy. All this is of little consequence, historically, except as bearing upon the trustworthiness of more important statements.

It is stated in Sumner's biography that "Mr. Fish consulted Sumner as to the instructions to Motley, specially asking his help on that part relating to the concession of belligerent rights."[1] This

[1] *Memoir and Letters*, iv. 403.

statement is subject to considerable modification. What took place was this: —

The draft of instructions to Motley of May 15, 1869, prepared by the Secretary of State, was approved by the President and Cabinet. I cannot say when the text of it came before Mr. Sumner; but the substance of it must have come to his knowledge before the 13th of May. On that day I was told, on returning in the afternoon from the Department of State, that he had been to my house three times to see me. He soon came again, and began at once an animated conversation, more like a speech, addressed to me. After referring to the draft, he added: "Is it the purpose of this Administration to sacrifice me, — me, a senator from Massachusetts?" I listened for some time in astonishment, and then replied that I had not seen the instructions (I saw them for the first time the next day); that I was a subordinate in the Department; and that I thought he had better see my Chief. I offered to say to Mr. Fish that Mr. Sumner would call in the evening. He

replied he would be glad if I would do so.

I went at once to Mr. Fish, told him what had taken place, and added that Mr. Sumner seemed to be in a state of great excitement. His tremulous manner and loud voice made upon me the impression that his mind was affected. After I knew him better, I understood that this was a natural condition with him when much excited.

In the evening Mr. Sumner made his visit according to the appointment. He was received kindly, as he always had been, by Mr. Fish. When he rose to go, about half past ten, Mr. Fish accompanied him to the door. It was one of those mild evenings in May which in Washington make the doorsteps so attractive. Standing there, Sumner opened his case. They talked long. Sumner's voice at last became so loud, as his feelings were aroused, that Mr. Fish said, pleasantly: "Sumner, you roar like the bull of Bashan. The police will be after us. I think we had better adjourn." Sumner smiled, and bade him good-night.

On Saturday, the 15th of May (possibly a day earlier), Sumner went to the Department and read the instructions. They did not please him. He became much excited, walked up and down the room, talking very loudly, and said he would make Motley resign. The Secretary answered, perhaps somewhat in the same spirit, "Let him resign. I will put a better man in his place." Sumner then became more calm, and the Secretary asked him to put on paper what he wished to have said. In response he then and there wrote a paragraph which he proposed to substitute for the one in the draft. Mr. Fish refused to accept it, reminding him that it assumed the extreme doctrine contained in his speech. Sumner replied, "I am too much excited now; allow me to send you another paper."

On Monday, the 17th, Mr. Sumner sent to Mr. Fish another draft, which he desired to have substituted for the former, accompanying it by a letter, saying: "As chairman of the Senate Committee, I ought not in any way to be a party to a statement which abandons or enfeebles

any of the just grounds of my country as already expounded by Seward, Adams, and myself. As you were kind enough to give me an opportunity of expressing an opinion, I owe it to frankness to declare my dissent from the course proposed. I do this in all kindness, and only under a sense of duty. I regret that Mr. Motley's own programme has not been adopted. . . . I wish he were allowed to speak according to his own enlightened discretion."

The note making this protest drew from Mr. Fish a reply, in which he said: "I am sorry to receive your note this morning. I think that you are scarcely doing justice either to me or the Administration. We have but one object, and only differ as to some incidents. They may be of more importance than I suppose, or of less than you think, but can hardly be of sufficient importance to break up an effort at negotiation, *or to break down an Administration.* I trust, therefore, *you will reconsider the intimations of your letter.*"[1]

[1] *Memoir and Letters*, iv. 405. The very suggestive italics are mine.

The substitute which Sumner sent was more temperate than his former draft, but it still assumed ground which the President was not willing to occupy. The Secretary then prepared the sentence as it now stands, adopting some of Sumner's expressions, and he obtained the President's assent thereto. On the questions which then separated Mr. Sumner from the President and Mr. Fish, the instructions said: —

"The President recognizes the right of every Power, when a civil conflict has arisen within another state, and has attained a sufficient complexity, magnitude, and completeness, to define its own relations and those of its citizens and subjects toward the parties to the conflict, so far as their rights and interests are necessarily affected by the conflict.

"The necessity and the propriety of the original concession of belligerency by Great Britain at the time it was made have been contested and are not admitted. They certainly are questionable, but the President regards that concession as a part of the case only so far as it shows

the beginning and the animus of that course of conduct which resulted so disastrously to the United States. It is important in that it foreshadows subsequent events."

This was a complete abandonment of the position for which Mr. Sumner had contended in his speech. Letters recently published by Mr. Pierce show that the senator represented himself as thinking that the clause abandoning his position on belligerency was given up.[1] It is difficult to see how he could have persuaded himself to think so. The proclamation of belligerency, which, on his theory, carried a lighted British torch over the sea and around the globe, to destroy American commerce, disappeared from the controversy, except as evidence, which, in connection with other evidence presented by the United States at Geneva, vindicated the contention of the United States. Motley was only directed in his "social and private intercourse and conversation," as well as in his "official conversation and intercourse," "to place the

[1] *Memoir and Letters*, iv. 406.

cause of grievance against Great Britain, not so much upon the issuance of her recognition of the insurgents' state of war, but upon her conduct under and subsequent to such recognition;" and in his "social intercourse with the representatives of other Powers which made similar recognitions, to let them understand . . . that the United States make such recognition by them no ground of complaint."

This treatment of the proclamation of belligerency by the Secretary of State materially affected the relations which had previously existed between the two friends. Their friendship remained outwardly unbroken; but inwardly it had received a great check. I was informed by Mr. Fish, shortly before his death, that "Mr. Pierce must have found correspondence between these two old friends, between the summer of 1869 and the winter of 1870–71," "showing increasing differences, with occasional exhibition of feeling, indicating a coming lessening of the old friendship."[1]

Motley went to England with these in-

[1] Mr. Fish to Mr. Davis, June 10, 1893.

structions in his pocket. In the letter to the "Herald," it is stated in detail how he executed them. It is sufficient to say here that, soon after his arrival, he sought an interview with Lord Clarendon, then at the head of the Foreign Office. He had a conversation with him in which he presented and pressed the claims on the grounds on which they had been put by Mr. Sumner in his speech. He said to Lord Clarendon that the proclamation of neutrality had been "the fountainhead of the disasters which had been caused to the American people, both individually and collectively." And when he left the Foreign Office he prepared an account of the interview which, when engrossed, he submitted to Lord Clarendon for revision.

This account, when revised, was transmitted to Mr. Fish, without any intimation that the British Foreign Secretary had seen it. Grant, with his soldierly instincts, was disposed to hold Motley to an immediate account for it. At a later day, speaking of it, he said: "As soon as I heard of it I went over to the State

Department and told Governor Fish to dismiss Motley at once. I was very angry indeed, and I have been sorry many a time since that I did not stick to my first determination." [1]

Mr. Fish, however, anxious to prevent a collision with Sumner, was of the opinion that, under the circumstances, no harm had been done which could not be rectified by speaking to the British Minister in Washington. He advised the withdrawal of the negotiations from London, leaving Motley there as a figure-head, to which Grant assented.

Some seven weeks later, Motley informed the Secretary of State of his neglect to communicate the fact that his "dispatch No. 8, of June 12th, containing a minute record of an official interview with Lord Clarendon, was confidentially submitted" "to his Lordship." On hearing of this, Grant again ordered Motley's immediate recall; but the Secretary obtained a further delay, and Motley was only instructed to say to Lord Clarendon that his presentation of the case and

[1] Holmes's *Memoir of Motley*, 180.

treatment of the subject discussed at the interview of June 12 had been disapproved by his Government.

In looking back upon this controversy, it is easy to see that the Secretary of State made a great mistake in advocating the retention of Motley at London.

It is the duty of a diplomatic officer to receive and obey the instructions of his superior. Other great Powers have a trained corps to perform these services. Like the young cadets in the military and naval services, they begin at the bottom and work their way up. They have no more right, at any stage, to exercise their own judgment, when it conflicts with the expressed will of their superiors, than a captain of infantry has to refuse to obey the order of the general in command, because he fancies something better could be done. It was into such a service that Motley was put, on the request of Sumner. The relations of our diplomatic and consular agents to the Executive are, and from the nature of things must be, precisely the relations which exist where the incumbents enjoy

permanency of service and a career. It was the clear duty of Motley to execute his instructions without regard to his own opinion of their wisdom or correctness. Why he did not do so may be gathered from an expression let fall by Sumner in a letter to Motley of June 20, 1869: "With more experience at Washington our front would have been more perfect;"[1] or, in plain English, if Grant and Fish knew as much as you and I do, our front would have been more perfect.

On the 9th of October, 1869, Mr. Fish, writing to Mr. Sumner, said: "He [Motley] did not follow his instructions in the interview with Lord Clarendon, narrated in his No. 8. My reply was as gentle as it possibly could be made, without transferring to him the entire conduct of the question, regardless of the views of the President or of the Cabinet on the relations between this Government and Great Britain. Under any other Government than this, such violation of instructions as his No. 8 exhibited would not have

[1] *Memoir and Letters*, iv. 410.

failed to be followed by the most severe censure, — probably by an immediate recall. My high personal regard and friendship for him confined my reply to a tone of moderation, intended to remind him of the line of policy that he was charged to pursue."

And then, referring to the withdrawal of the discussion from London, the letter continued: "It would have been thus withdrawn, however discreet he might have been, and however scrupulously he might have followed his instructions, *because* we think that when resumed it can be carried on here with a better prospect of settlement than where the late attempt at a convention which resulted so disastrously, and was conducted so strangely, was had."

In the private and confidential paper, circulated by Mr. Sumner in his lifetime and printed after his death in his collected works, he says, speaking of this letter: "Then again we have the positive allegation that the President embraced an opportunity 'to prevent any further misapprehension of his views through Mr.

Motley, by taking from him the right to discuss further the "Alabama Claims;"' whereas the Secretary, in a letter to me at Boston, dated at Washington, October 9, 1869, informs me that the discussion of the question was withdrawn from London '*because*' (the italics are the Secretary's) 'we think that, when renewed, it can be carried on here with a better prospect of settlement than where the late attempt at a convention which resulted so disastrously and was conducted so strangely was had;' and what the Secretary thus wrote he repeated in conversation when we met, carefully making the transfer to Washington depend upon our advantage here from the presence of the Senate; thus showing that the pretext put forth to wound Mr. Motley was an afterthought." [1]

Mr. Pierce in like manner separates this extract from its context; suppresses all before the word "*because;*" and comments upon the reason given by Mr. Fish in the instruction to Mr. Moran for the withdrawal of the negotiation from Lon-

[1] *Works of Charles Sumner*, xiv. 268, 269.

don, in the identical language used by Mr. Sumner.[1] If experience had not taught me that different persons reach different conclusions from the same evidence, as the individual bias of each may turn him, I should find it difficult to understand how any one, having before him that private letter of October 9, 1869, from Fish to Sumner, could say that the reason given by Mr. Fish in the Moran letter for withdrawing the negotiations from London was "manifestly an afterthought."

A gentleman, afterwards well known as Sir John Rose, who was then a member of the Ministry in Canada, and also a Commissioner on the part of Great Britain to settle the claims of the Hudson's Bay Company and of the Puget Sound Company against the United States, came to Washington in the summer of 1869, professedly to make some commercial arrangements between the United States and Canada, but really to sound our Government as to the possibility of settling the Alabama Claims.

[1] *Memoir and Letters*, iv. 410.

In an interview with Mr. Fish, he spoke with much anxiety of what he considered the critical relations between the United States and Great Britain. He said that the rejection of the Johnson-Clarendon Treaty, which had been adopted by Great Britain in the form proposed by the United States, and Mr. Sumner's speech, seemed to preclude any settlement. Mr. Fish replied that he was by no means hopeless; that on two previous occasions the two countries had been very close to a rupture, when the sending of a special envoy — Lord Ashburton in 1842 and Lord Elgin in 1854 — had effected a peaceful settlement. What had been done before might be done again. Rose suggested the names of the Duke of Argyll, and of Mr. Forster; but Mr. Fish said the time had not arrived; that the British people were too much irritated by the rejection of the treaty, and by Mr. Sumner's speech, and that our people were too much carried away with the idea of paying off the cost of the war with the amount of damages that Mr. Sumner's speech had made out against Great Brit-

ain. He said that when the excitement subsided, the appointment as special envoy of some man of high rank, authorized to express some kind word of regret, would pave the way for a settlement; and he outlined to Sir John the exact scheme for settlement which was adopted a year and a half later.

Mr. Fish then officially informed Sumner, as Chairman of the Committee on Foreign Relations, of what had taken place between him and Rose. Thereupon, on the 17th of August, 1869, Sumner wrote Motley: "Fish thought that any negotiation on the claims should be at Washington, where the Senate can be consulted, as nothing can be done without the consent of that body. He had talked with John Rose, of Canada, who had sounded him about sending out the Duke of Argyll." [1]

Motley remained in London, but could not keep quiet. In my letter to the "Herald," so often referred to, I said: "Late in the autumn of 1869, an English gentleman of the best position in politics,

[1] *Memoir and Letters*, iv. 413.

of high personal character, and a very good friend to Mr. Motley, wrote, in language most kind and in spirit friendly to that gentleman, a letter to Mr. Fish, expressing fear and regret that Mr. Motley's bearing in his social intercourse was throwing obstacles in the way of a future settlement. Mr. Fish informed Mr. Sumner of the purport of the information; but he saw fit to regard this friendly expostulation as the communication of an enemy, and said it was only a repetition of the 'McCracken' letters. Under the circumstances, Mr. Fish felt unwilling to push an inquiry which might seem to imply a willingness to censure, and thought it better to submit for a while to misrepresentation at London rather than increase the differences between Mr. Sumner and the Administration."

This statement has been harshly criticised by the biographer of Motley.[1] I

[1] "Mr. Davis's pamphlet would hardly be complete without a mysterious letter from an unnamed writer, whether a faithless friend, a disguised enemy, a secret emissary, or an injudicious alarmist." — Holmes's *Memoir of Motley*, 177, 178. The Autocrat of the Breakfast-Table as a poet and writer is justly

can now state that the gentleman who wrote to Mr. Fish was Sir John Rose, who was, beyond doubt, "an English gentleman, of the best position in politics, of high personal character, and a very good friend to Mr. Motley." His statements were made in entire good faith, in perfect kindness to Mr. Motley, and with a view of maintaining good relations between the two Powers; and were, I believe, absolutely correct.

Meanwhile the British Minister at Washington was making advances to Mr. Fish to ascertain the views of our Government as to the basis on which the Alabama Claims could be settled. On the 6th of November, 1869, Mr. Fish wrote full details of these interviews to Mr. Sumner, saying that Mr. Thornton wanted something definite, "which I was not willing to give until I could have the opportunity of consulting with you to know what your committee and the

admired by all; but he seems here to have given a wide play to his imagination and fancy, upon a variety of persons, — critics, friends, enemies, etc., — who are hardly worthy of this exhibition of his great powers.

Senate will agree to." This letter is cited by Mr. Pierce as discrediting my "account of differences between Mr. Fish and Sumner in April and May preceding."[1] I can only say that it strikes me quite the other way. Sumner is addressed as "My dear Sumner," and Mr. Fish signs himself "Faithfully yours;" but all between these two accustomed perfunctory phrases is official matter from the Secretary of State to the Chairman of the Senate Committee on Foreign Relations, on a subject about which they had disagreed.

Soon after the withdrawal of the Alabama negotiations from London, events took place in Washington which led to an open disagreement between the President and Mr. Sumner, and to the cessation of all personal intercourse. A treaty, negotiated under the inspiration of the President, for the annexation of San Domingo, was laid before the Senate on the 10th of January, 1870, and rejected by that body on the 30th of the following June. Before sending this treaty to the Senate,

[1] *Memoir and Letters*, iv. 414.

the President had an interview with Mr. Sumner at the senator's house. Mr. J. W. Forney and Mr. B. P. Poore were present at the beginning of the interview, and Mr. Boutwell came in soon afterwards. What took place has been more than once described. Although there is conflict of statement, a few things are certain.

(1.) That the President desired to secure the support of the Chairman of the Committee on Foreign Relations for the treaty, which was then regarded by him as an important feature in his foreign policy, and, with that object in view, he addressed himself to the senator at that interview.

(2.) That Mr. Sumner met the President by first availing himself of the "opportunity to say a word for his friend J. M. Ashley, recently removed from the governorship of Montana," [1] and, after doing this, discussed the subject about which the President had come to talk with him.

(3.) That the President left with the

[1] *Memoir and Letters*, iv. 433.

conviction that the treaty would receive the support of the senator; in which impression Mr. Forney and Mr. Boutwell concurred. Mr. Boutwell informs me that he remembers the exact words spoken by Sumner to the President as he left: "I expect, Mr. President, to support the measures of your Administration." Mr. Forney, in a letter to the "Philadelphia Press" of October 3, 1877, said: "Both President Grant and myself believed that Mr. Sumner intended to support the San Domingo scheme after the conversation here referred to."

(4.) That the senator afterwards disclaimed having used such language, or having promised anything more than "the most careful and candid consideration."

Mr. Sumner did not give the measure the expected support. No one can question his right to withhold his support from a measure which did not commend itself to his mature judgment. On the other hand, the President not only had a right to press ratification of the treaty in all proper ways, but it was his duty to do

so if he thought it would be for the best interests of the country.

The President of the United States has powers and rights as well as duties. In the conduct of foreign affairs, and in the preparation of treaties for submission to the Senate, he stands alone. The statute defining the duties of the Secretary of State has in foreign affairs conferred on that officer no discretion when the President has expressed his will. To the head of the Treasury Department the law has given independent discretion. But not even both houses of Congress combined could have diminished the constitutional power of President Grant to conduct, in his own way, negotiations for the annexation of San Domingo, or for the settlement of the Alabama Claims. The Senate could have rejected any treaty he made; but till the treaty had been submitted to that body, it was powerless; and in every sense the Secretary of State is in such matters a subordinate of the President, whose will must be obeyed.

No man appreciated that more perfectly than did Hamilton Fish. He realized

that to effectually clear the docket of the State Department of serious and disturbing cases, the opinions of the President, the Senate, the Congress, and the country must be regarded; and if there were conflict between the opinions of the President and the Senate, they must be reconciled. Mr. Fish could have resigned his office, and abandoned his difficult task, but that was not his view of patriotic duty.

The President felt that a promised support of the San Domingo Treaty was withheld, and he soon knew that a personal opposition, unnecessarily bitter, was substituted for it. What I said on this subject in my letter to the "Herald" still seems, with all the new light thrown upon it, to be the simple truth. It was this: —

"The President and others who were present left Mr. Sumner's house that night under the impression that the senator had expressed his approval of the measure and his intention to support it. It was not long, however, before he was seen to be against it. Hostility

to the measure soon changed into hostility to the promoters of it. Bitter and exasperating remarks upon the President and his friends put an end to possibility of intercourse between General Grant and Mr. Sumner, and undoubtedly accelerated the breach between the latter and Mr. Fish. On the 30th of June, 1870, the treaty — the eventual defeat of which had been evident for months — was formally rejected. On the 1st day of July, 1870, Motley was asked to resign. He refused and was thereupon removed, and the Senate approved the nomination of his successor without serious opposition."

In the statement which Mr. Sumner left unpublished at his death, it is said that Mr. Fish came to his house in June, 1870, and labored in a long interview to restore harmony between the President and the senator. It is quite true that an interview did take place about that time, in which the Secretary attempted to bring about — what he had much at heart — a better feeling between the Chairman of a leading Committee in the

Senate and a Republican President; but I have the best reason to believe that it is not true that at that time, or at any other time, he suggested to Mr. Sumner that he should take the English mission as a reward for surrendering his opposition to the acquisition of San Domingo. The story is improbable on its face. Mr. Sumner, as a man of honor, could not have listened to so insulting a proposition without instantly resenting it.

What did take place on the subject of the English mission was this. Up to the middle of 1870 Mr. Sumner and Mr. Fish, notwithstanding their disagreement about the Alabama Claims, were in the habit of meeting, and of talking with freedom of their personal affairs. At one of these meetings Mr. Fish found Mr. Sumner in a depressed and melancholy mood. He had been brooding over his domestic troubles, and his feelings found vent in a comparison, with tears in his eyes, of his own desolate condition with the domestic happiness of his friend. Long before that time it had been practically decided to retire Mr. Motley.

Mr. Fish, knowing this, and knowing, too, that Sumner must feel that it would come, said: "Sumner, why don't you go to England? Take the English mission, and forget your troubles here among your many kind friends there." He answered that the mission was already filled. The subject was dropped, and was never resumed.

Mr. Pierce says that "up to the time of Motley's removal, Sumner had said nothing of the President, in speech or writing, which was wanting in respect for his character and services, but had treated him throughout with perfect deference and courtesy."[1] In this matter Mr. Pierce has been greatly misinformed. Mr. Sumner spoke publicly, abusively, and insultingly of the President weeks or months before Motley was recalled. Indeed, Mr. Sumner's biographer substantially admits that "there was doubtless free talk at the senator's house."[2]

Although Motley was recalled in July, he remained at his post until December.

[1] *Memoir and Letters*, iv. 446, 447.
[2] *Memoir and Letters*, iv. 455.

On being peremptorily required to leave, he wrote, as his last official act, a controversial dispatch to the Secretary of State, which contained unjust and untrue imputations on the President, that could not be left unanswered on the files of the Legation at London, or of the Department in Washington.

By direction of the President this dispatch was answered by the instruction to Moran of December 30, 1870, already alluded to.

It has been insinuated by Mr. Sumner,[1] by Dr. Holmes,[2] and by Mr. Pierce[3] that Mr. Fish was not the author of the instruction to Moran. This insinuation has no foundation in fact. The reply was written by Mr. Fish, as already stated, and was shown to me in Mr. Fish's handwriting, after it had been submitted to the President and approved by him. It then contained, in the form in which it now stands, the following paragraph, which Mr. Pierce quotes, and styles "Fish's insult:" —

[1] *Memoir and Letters*, iv. 468.
[2] Holmes's *Memoir of Motley*, 162.
[3] *Memoir and Letters*, iv. 465.

"Mr. Motley must know, or if he does not know it, he stands alone in his ignorance of the fact, that many senators opposed the San Domingo Treaty openly, generously, and with as much efficiency as did the distinguished senator to whom he refers, and have nevertheless continued to enjoy the undiminished confidence and the friendship of the President, — than whom no man living is more tolerant of honest and manly differences of opinion, is more single or sincere in his desire for the public welfare, is more disinterested or regardless of what concerns himself, is more frank and confiding in his own dealings, is more sensitive to a betrayal of confidence, or would look with more scorn and contempt upon one who uses the words and the assurances of friendship to cover a secret and determined purpose of hostility."

This paragraph in the instruction to Moran is assigned by Mr. Pierce as the reason why Sumner terminated relations with his old friend.[1] At this late day, when the correspondence can be read

[1] *Memoir and Letters*, iv. 466.

without the contemporaneous feeling, there does not seem to be anything in the paragraph which required or justified such action, unless the senator felt that the coat fitted.

All this correspondence was sent to the Senate on the 9th day of January, 1871, and was ordered to be printed. On the same day Sir John Rose arrived in Washington on a confidential mission. In the evening of that day he dined with Mr. Fish. I was the only other guest. When dinner was over they began business, and it was between two and three o'clock in the morning before the conference ended. After the lapse of over twenty years it may not be indiscreet to transcribe extracts from a memorandum of that conversation, made by me at the time: —

"Sir John Rose stated that he had been requested by the British Government, informally, unofficially, and personally, as one half American, one half English, enjoying the confidence of both Governments, to ascertain what could be

done for settling the pending questions between the two Governments; and that he was authorized to say that, if it would be acceptable to the Government of the United States to refer all those subjects to a joint commission, framed something upon the model of the commission which made the Treaty of Ghent, he could say that the British Government was prepared to send out such a commission on their part, composed of persons of the highest rank in the realm. He dwelt upon the importance of settling these questions now. . . .

"Mr. Fish replied that, before agreeing to go into such a commission, there should be a certainty of success, — for failure would leave things much worse than they were before, — and he asked whether, in going into a commission, the British Government would be prepared to admit a liability for what were known as the Alabama Claims.

"Sir John said that he would be wanting in frankness if he did not state that such a concession would not be made; that, in his own judgment, the Govern-

ment of Great Britain would be found to be liable for the damage committed by the Alabama, and, as to the other vessels, it would be doubtful; that the Government was prepared to agree to a submission to arbitration, either to Continental jurists, or to a mixed court composed of English and American jurists, or to any other tribunal that the two Governments might agree upon; but that the feeling in England was such that the Government would not be supported in Parliament in agreeing to admit the liability for the acts of the Alabama.

"Mr. Fish replied that with equal candor he must say that this Government would not, in his judgment, be supported by the Senate or by the country in making a treaty which did not recognize that liability; that under our Constitution one third of the Senate and one senator in addition could defeat a treaty; that most of the present senators had voted against the Johnson-Clarendon Treaty, and were committed as to the liability of England as to the Alabama; that the discussion made at that time had left a feeling

among the people which would tend to prevent any change in the vote of the Senate; that the changes which were to be made in the Senate on the 4th of March would probably not make much change in this respect; that he thought that the nation might possibly be satisfied with a recognition of liability for the acts of the Alabama, and be reconciled to the submission of the liability as to the other vessels; and that, therefore, unless Great Britain could concede that point, it would be useless to go into a commission.

"Sir John Rose endeavored at great length to combat these views, and urged in a forcible way his own conviction that if the two nations once met in commission the commissioners would not part without agreeing to a settlement. He also argued, quoting Mr. Lowe, that the people who furnished the money for and superintended the fitting out of the Alabama, who were Americans, were now in the full enjoyment of their rights as citizens of the United States, and that the question was a domestic one between this Government and its citizens.

"Mr. Fish replied that the British Government was estopped, by the recognition of the South as belligerents, from denying their character as public enemies. He repeated the necessity for a recognition of liability as to the Alabama as a preliminary. He said that he did not ask England to humiliate herself, — to say that her laws were inefficient, or her government unfaithful to its duties; that it seemed to him that England might very well feel that, owing to the negligence or unfaithfulness of a local officer, this vessel had been allowed to escape against the directions of the Government, and that thereby that Government had become liable, and should couple this statement with an expression of regret for what had taken place to disturb the relations of the two countries, — that less than this the United States ought not to be and would not be satisfied with.

"Some discussion was also had as to the manner in which the questions should be raised.

"Sir John Rose said that the British Government could not take the initiative

in the question of the Alabama Claims, and suggested that, in case the way for a settlement seemed clear, the British Government should propose a commission for the settlement of the San Juan boundary, the fisheries, and other Canadian questions, and that the United States should accede, provided the claims for the acts of the vessels should be also considered. Mr. Fish assented to this."

Sir John put himself the next day in communication with the Foreign Office in London, and on the following day laid before Mr. Fish a confidential memorandum touching the subjects to be considered and the mode of proceeding, with permission to copy it. On the 12th, Mr. Fish returned it "with thanks and with hopes."

Matters were now sufficiently advanced to warrant the Secretary in consulting the Chairman of the Senate Committee on Foreign Relations, and, on the 15th of January, he went to Mr. Sumner's house by appointment. The senator gave no answer on that day, but on the

17th of January sent the following memorandum in writing to Mr. Fish as his answer: —

Memorandum for Mr. Fish, in Reply to his Inquiries.

First. — The idea of Sir John Rose is that all questions and causes of irritation between England and the United States should be removed absolutely and forever, that we may be at peace really, and good neighbors, and to this end all points of differences should be considered together. Nothing could be better than this initial idea. It should be the starting-point.

Second. — The greatest trouble, if not peril, being a constant source of anxiety and disturbance, is from Fenianism, which is excited by the proximity of the British flag in Canada. Therefore the withdrawal of the British flag cannot be abandoned as a condition or preliminary of such a settlement as is now proposed. To make the settlement complete, the withdrawal should be from this hemisphere, including provinces and islands.

Third. — No proposition for a joint commission can be accepted unless the terms of submission are such as to leave no reasonable doubt of a favorable result. There must not be another failure.

Fourth. — A discrimination in favor of claims arising from the depredations of any particular ship will dishonor the claims arising from the depredation of other ships, which the American Government cannot afford to do ; nor should the English Government expect it, if they would sincerely remove all occasions of difference. C. S.

January 17, 1871.

As with the speech on the Johnson-Clarendon Treaty, so here, if it had been the deliberate purpose of the Chairman of the Senate Committee on Foreign Relations to make trouble for the Administration, he could not have selected a more ingenious way for carrying out that design. To a suggestion that we should negotiate for the settlement of our disputed boundary and of the fisheries, the chairman officially replied that we should

negotiate only on condition that Great Britain would first abandon the whole subject of the proposed negotiation. His intent was plain, — to put an end to the scheme.

A feeling prevailed largely in the Senate, and was gaining ground, that, considering Sumner's relations with the President and the Secretary of State, there should be a change in the chairmanship of the Committee on Foreign Relations. Mr. Pierce says that this feeling took shape in the Republican caucus at the beginning of that session of Congress.[1] Mr. Fish and the President thought it unwise to make the change. When, however, this ultimatum was received from Mr. Sumner, Mr. Fish, with the assent of the President, withdrew all opposition.

Meanwhile, and before the organization of the committees by the Senate in its new session took place, Mr. Sumner turned his back upon the Secretary of State at a dinner at General Schenck's.[2]

[1] *Memoir and Letters*, iv. 455.
[2] *Memoir and Letters*, iv. 468.

The insult was as public as it could be made. When the Republican caucus met to elect its committees, the majority were of the opinion that it was not wise to have a Chairman of the Committee on Foreign Relations who was not on speaking terms with either the President or the Secretary of State, and who had announced a purpose in advance of checking the pending negotiations with Great Britain.

In reaching this conclusion these senators acted entirely within their constitutional right. It has been called a removal of Mr. Sumner. It was no such thing. His term of office had expired. The new Senate, composed in many cases of different men, elected another senator to succeed him. That was all. The gentlemen who desired to continue Mr. Sumner in the place had a right to vote for him without having their motives assailed. Those who wanted Mr. Cameron for the place had an equal right to follow their convictions in voting for him.

Simon Cameron was the second in

line upon the committee. He had had about nine years' experience in the Senate, during five of which he had served on the committee to the head of which he was now elected. He had served as Minister to Russia during the war, and had been a member of the Cabinet of Abraham Lincoln.

Commissioners were then appointed on both sides to negotiate a treaty for the settlement of the differences between the two Powers. The evil influence of Mr. Sumner's speech and of his memorandum followed the American Commissioners into the negotiating conferences. Mr. Fish had proposed to insist upon the recognition of liability for the acts of the Alabama as necessary before agreeing to arbitrate as to the other vessels; but Mr. Sumner's protest made it impossible to persist in this claim, and thus we lost the great advantage of such an admission in the subsequent arbitration.

And, further, as to the national claims which had been put forth officially by the Chairman of the Committee on Foreign Relations, all the American Commission-

ers felt that, for the protection of the country in the future in case of a war in which we should be neutrals, these pretensions should be judicially disposed of. But this, as will be soon seen, was more easily said than done.

The Joint High Commission was organized on the 27th of February, 1871. One of its first acts was to determine that the daily protocol should not contain a record of all the daily doings, so that, as negotiations went on, the process of give and take, in mutual concessions, should not be impeded by previous recorded action.

The Secretary of State was chairman on the side of the United States, and, from the beginning to the end, his was the inspiring, regulating, and dominating mind. He formulated on behalf of the United States the plan for the settlement of these long-standing and momentous differences. To the end, he controlled the conduct of the American side in the contentions at Geneva, and infused courage in those who were beginning to wilt in face of the British outcry against

the American Case. He had the steadfast and loyal support of the President throughout, and it was of inestimable value.

Next Mr. Fish upon the American side was the venerable Samuel Nelson, then the eldest Justice in time of service, as well as in years, upon the bench of the Supreme Court of the United States. In politics he was opposed to the Administration which invited him to serve his country as a member of this Commission, but he cheerfully complied with its request. His counsel was always given when called for, and was never overruled. His work there closed an honorable and almost unparalleled career of nearly fifty years of judicial service. When the Court met again he was retired at his own request.

The other members of the Commission on the American side were Robert C. Schenck, who had been appointed as Minister to Great Britain in the place of Mr. Motley, but had not yet gone to his post; Ebenezer Rockwood Hoar, of Massachusetts, at one time a Judge of the

Supreme Judicial Court of that State, and afterwards Attorney-General of the United States at the beginning of General Grant's Administration; and George H. Williams, of Oregon, who had just ceased to represent that State in the Senate of the United States.

On the British side, at the head was Earl de Grey and Ripon (soon to be known as the Marquess of Ripon), a member of Mr. Gladstone's cabinet. Sir Stafford Henry Northcote, Member of Parliament from South Devon, was selected from the opponents of Mr. Gladstone to be a member, as Mr. Justice Nelson was from the opposition to General Grant. Sir Edward Thornton, Her Majesty's Envoy to the United States, held the same position in the British ranks that General Schenck held in ours. Professor Mountague Bernard, of All Souls College, Oxford, and Sir John A. McDonald, then Premier of Canada, completed the list of British members.

Lord Tenterden, the Under Secretary of State for Foreign Affairs, served as Secretary on the part of Great Britain.

I served in a similar capacity for the United States, as I held, at that time, a similar position in the Department of State to that held by Lord Tenterden in the Foreign Office.

Sir Stafford Northcote has left on record his impressions of these protracted sessions. "We are on the best of terms," he says, "with our colleagues, who are on their mettle, and evidently anxious to do the work in a gentlemanly way, and go straight to the point."[1] I feel sure that every American member would have heartily responded to these kindly words, and applied them to his British colleagues.

Sir Stafford also represents that the British Commissioners were needlessly interfered with by their Home Government, through the cables.[2] On our side there was, of course, no such trouble.

[1] *Life, Letters, and Diaries of Sir Stafford Northcote*, ii. 15.

[2] Of Lord de Grey Sir Stafford wrote (vol. ii. p. 13): —

"The U. S. Commissioners give him some trouble;
He don't blame them for *that* — it 's their duty, you know;
And his Cabinet colleagues, they give almost double, —
They do it from love, and he likes it — so, so!"

The original statement by the American Commissioners on the subject of the Alabama Claims was made on the 8th of March, in a paper drawn up by Mr. Fish, and read by him. A copy was given to the British Commissioners. This statement was subsequently embodied in a protocol, a transcript of which will be found in the Appendix. The material part of it, upon which a controversy arose, was this : —

"The history of the Alabama and other cruisers . . . showed extensive direct losses . . . and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the Rebellion ; . . . in the hope of an amicable settlement no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account in the event of no such settlement being made."

The subsequent controversy between

the two Governments, which grew to a magnitude sufficient to make it historic, related to these claims for "indirect injury." They eventually became known as "The Indirect Claims."

The negotiations proceeded slowly in the Joint High Commission, and it was not until the 6th of April that the question of the scope of the submission came up. Lord de Grey contended (I quote from my diary written each day at the close of the conference) that "should a liability be established for the Alabama," some general rule of damages "should be laid down to govern the arbitrator;" "that the reference should not be made so wide as to allow the arbitrator to take a claim which had been put forward in the correspondence, though, he supposed, not seriously, for compensation for the expenses to which the United States had been put by the prolongation of the war." Mr. Fish replied to this by asking "if he would exclude that claim. Suppose a competent tribunal should decide that Great Britain was liable, would Great Britain deny the liability?" All the

American Commissioners appeared to think that, unless this class of claims should be included in the reference, the settlement would be incomplete. Mr. Williams "thought that the British Commissioners ought to state what limitations of the law of nations they desired." Judge Hoar "understood Lord de Grey to ask for the rule or law of damage for such claim," and added, "we propose general suggestions, and you indicate a desire to limit them. You should state your limitations." The British Commissioners were unable to do this on the spot, and the conference was adjourned until the 8th of April.

On that day the American Commissioners had a long preliminary meeting, in which they discussed the form of the language in which the submission of the claims should be made. Three Commissioners contributed, each, a form for the proposed submission. These forms were referred to the other two to prepare a draft for submission to the British Commissioners.

In this preliminary meeting Mr. Fish

said to his colleagues that "he supposed it was pretty well agreed that there were some claims which would not be allowed by the Arbitrators, but he thought it best to have them passed upon." His colleagues thought so, too, and the draft was made so as, in their judgment, to include such claims, and was then submitted to the other side in the joint conference held at a subsequent hour on the same day.

The enacting clause of this draft was in the following language: —

"The High Contracting Parties agree that all the differences between the two Governments which arose during the recent Rebellion in the United States, growing out of the acts committed by the several vessels, which have given rise to the claims generically known as the Alabama Claims, and all such claims, shall be referred," etc.

Lord de Grey objected to this. "He observed that the first paragraph made a provision for a reference of all differences and of all claims, etc., thus drawing a distinction between differences and

claims." "Differences," he said, "was a very vague word." "Precise language should be used in such a document as this." Mr. Fish said that what Lord de Grey "was supposed to allude to as being objectionable had not been put forward in the official correspondence, but had been made the subject of rhetorical efforts." He "urged that a partial submission would probably produce dissatisfaction in both countries, — certainly in this;" and he asked Lord de Grey "if he would leave all other questions open." He replied, "No, not exactly that. I suppose they would be covered by the treaty, if we come to one;" to which Judge Hoar very pertinently rejoined that "he did not see how that could be unless they were stated in the treaty."

This course of reasoning and discussion resulted in the reference of the subject to the two Secretaries of the Commission, with directions to prepare a draft. The difference between the draft reported by the Secretaries to the Joint Commission and the treaty as signed, in

respect of the scope of the submission, will be seen at a glance: —

The Secretaries' Draft.	*Treaty as Signed.*
Whereas during the recent Rebellion in the United States differences arose between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels, which have given rise to the claims generically known as the Alabama Claims;	Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the Alabama Claims;
And whereas [insert expression of regret] it has been determined, in order to remove all such differences, and to establish permanent good relations between the two Governments, and provide for the speedy adjustment and settlement of such claims:	And whereas [expression of regret]:
The High Contracting Parties therefore	Now in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of such claims, which are not admitted by Her Britannic Majesty's Government, the High Con-

agree that all the said claims growing out of acts committed by several vessels generically known as the Alabama Claims shall be referred, etc.

tracting Parties agree that all the said claims growing out of acts of the aforesaid vessels, and generically known as the Alabama Claims, shall be referred, etc.

The Joint High Commission was occupied during the 9th, 10th, 12th, and 13th of April in the discussion of the articles relating to the Alabama Claims, during which the changes from the draft above noted were made. On the 13th, while the 10th article (relating to the proceedings before the Assessors, should such proceedings take place) was under discussion, the American Commissioners raised a question concerning the mode of proof of the national claims for the pursuit of the cruisers. Although these claims had not been classified among the indirect claims, a discussion ensued upon the language of the first article, which terminated by the reading on behalf of the American Commissioners of the following paper: —

"We can consent to leave the language

as it is, upon the articles as they are, observing that in so assenting we are not to be in any wise understood to agree to a construction of the article that will exclude the claims of the United States for the pursuit of the vessels; but, on the contrary, we assent to the language used *because we consider it sufficient to include all claims of the Government which the Arbitrators may find to be just;*[1] it being understood that the claim of the United States for such pursuit is to appear in the protocol, which is to be made as having been expressly advanced and made by the United States in the opening of the discussion."

Lord de Grey replied that "he understood that the articles were to be passed subject to the arrangement of such a protocol at some future meeting."

Immediately after the adjournment of this conference I drew, under instructions, a draft of the proposed protocol, which was submitted to the American Commissioners for their approval. After careful consideration by them, this draft,

[1] The italics are mine.

as amended by them, was, on the 15th of April, handed by me to Lord Tenterden for the consideration of the British Commissioners. The statements relating to the acts of the American Commissioners stand now exactly as they were settled by the American Commissioners, with the recollection of what took place on the 13th of April fresh in their minds. The British Commissioners revised in some respects the statements in the protocol respecting their course. They amplified the reasons which influenced it, but the material statements in respect of their declining the settlement proposed on our side on the 8th of March, and of their offering an arbitration in the place of it, were left undisturbed.

After this trouble was weathered, and the language of the treaty agreed to, on the theory, on our side, at least, that it would be for the court to determine the extent of the submission, things went on more swimmingly. Before the beginning of May it was evident that there would be a treaty to submit to the Senate for its action. The British Government had

ordered its Commissioners to leave Washington "as soon as possible after the treaty was signed." Sir Stafford's comment on this is, "*Quam parvulâ sapientiâ!* It would simply upset the treaty if we came away before the Senate met."[1] On the 9th of May he wrote: "We remain here another ten days, principally because the American Government wish us to pay the Senate the compliment of awaiting their discussion of the treaty, and also because they think we may be able to influence particular senators, such as the Democrats and (still more) Sumner, over whom they have no party control. I had a long talk with Sumner, yesterday, and De Grey is to see him today. He is very cautious, but I do not think him unfriendly. He is very anxious to stand well with England; but, on the other hand, he would dearly like to have a slap at Grant. We have paid him a great deal of attention since he has been deposed, and I think he is much pleased at being still recognized as a power."[2]

[1] *Northcote's Life*, ii. 16.
[2] *Northcote's Life*, ii. 23.

One example of Sir Stafford's attention is given in Sumner's Memoir, in the shape of a letter to Sumner, in which Sir Stafford said that Sumner's speech "marks an epoch, perhaps the turning-point in the great controversy."[1] I fear that Sir Stafford smiled when he wrote that letter.

The Senate in due time gave its assent to the treaty; it was ratified by both Governments; the ratifications were exchanged, and it became a completed act. Mr. Charles Francis Adams was appointed the arbitrator on the part of the United States, and Sir Alexander Cockburn, the Lord Chief Justice of England, the arbitrator on the part of Great Britain.

The King of Italy, in the exercise of the power conferred upon him by the treaty, named as another arbitrator Count Frederic Sclopis of Turin, a member of an eminent Piedmontese family, a senator of Italy, a distinguished judge, a learned lawyer, a man of letters, whose name and reputation were European. In person he was tall beyond the ordinary height, noble and commanding. In char-

[1] *Memoir and Letters*, iv. 392.

acter he was firm, independent, upright, truthful. In manners he was a model for all gentlemen.

The President of the Swiss Republic named as the arbitrator on his part Mr. Jacques Stœmpfli, a gentleman of prominence in Swiss politics; and the Emperor of Brazil named the Viscount d' Itajuba, who was at that time his Minister Plenipotentiary at Paris. Both Mr. Stœmpfli and Viscount d' Itajuba were in every way qualified to perform the important duties thus imposed upon them.

Messrs. Caleb Cushing, William Maxwell Evarts, and Morrison Remick Waite were the official counsel on the part of the United States. Sir Roundell Palmer and Professor Mountague Bernard held the like position for Great Britain. On the part of the United States Mr. Charles C. Beaman was also named as solicitor (an office not contemplated by the treaty), and did excellent service.

Lastly, Lord Tenterden was the political agent, representing Her Majesty's Government, and I had a similar position on the part of the President of the

United States. We had held, as I have already said, somewhat the same relations to each other in Washington. It was a pleasure to me, and, without exposing myself to the imputation of vanity, I may say I believe it was a pleasure to him, to find the relations renewed at Geneva. Often during the negotiations at Washington, and still more often during the trying times at Geneva, we were obliged to trust to verbal statements of agreements or arrangements made between us, from sheer inability to find time to write out the details. Never, so far as I remember, was there the slightest misunderstanding between us as to what we had agreed to.

It fell to my lot to prepare the document styled in the treaty the Case of the United States. I did this to the best of my ability, and sailed for Havre in November, with the necessary quantity of copies in English and in French to enable me to comply with the provisions of the treaty.[1]

[1] Various claims having been made to a share in that work, I find it necessary to repeat that I am

On the 15th of December, 1871, the Arbitrators and the Agents met at Geneva for the purpose of delivering and exchanging the Cases of each Government and the accompanying evidence. It was bitterly cold — so cold that it was with difficulty that we could keep warm on the route from Paris to Geneva. I can in fancy see Viscount d' Itajuba, as he walked rapidly up and down the various stations in his fur coat and high fur-lined leggings, to get warm after the confinement in the railway carriage.

After organizing, the Arbitrators selected Count Sclopis as their presiding officer. It is the custom, in such cases, to appoint as president the member for the country in which the meetings are held ; but the preëminent fitness of Count Sclopis was so evident that all acquiesced.

chargeable with all the shortcomings, and the merits, if any, in that work. The latest claim is put forth in Appleton's usually accurate *Cyclopædia of American Biography*, where a participation in the authorship of the Case is ascribed to the late Chief Justice Waite, who never saw it until after it was put in at Geneva, and whose truthfulness and sense of justice would not have allowed him to claim joint authorship in a paper with which he had had nothing to do.

As Mr. Pierce has deemed it of sufficient importance to record the fact that the Case did not meet with the approval of himself, of Lord Russell, and of Sir Alexander Cockburn,[1] perhaps I may be allowed to say that it was not written with a view of pleasing them; but in order to present the American claims and the evidence in support of them to the Tribunal which was to pass upon them. The proof that this was done satisfactorily is to be found in the fact that all its legal positions on the main questions were adopted by the Tribunal.

After the papers had been duly put in and exchanged, the protocols were drawn or mapped out by the Secretaries. While waiting for the clerks to engross them, we sat in the conference-room listening to Sir Alexander Cockburn, who had been drawn into giving us an account of the Tichborne claimant and his case. Later on in the litigation the case came before the Lord Chief Justice; but at that time it had not been heard by him. He spoke French like a native, his mother

[1] *Memoir and Letters*, iv. 396 n., 398 n.

being of French origin. The sun was well above the horizon when he began his statement. The language in which he spoke lent itself to the picturesque story. The sun sank, twilight came and went, and before he finished his graphic account, we were in darkness.

These proceedings were followed by a dinner, given by the Agents, jointly, to the Arbitrators. The best of feeling seemed to prevail. We parted in the best of spirits, and apparently with the best of hopes. Before a fortnight was over these hopes were dissipated. The English press had got hold of the American Case, and a foolish and unreasoning outcry against it had begun. It was weeks before this outcry assumed the form which it finally took. Many and varied objections were taken to the Case, none of them founded upon the objection finally adopted. After these weeks of seeking, the objection was found which her ministers finally put into Her Majesty's mouth in the Royal Speech to Parliament in February, 1872: "In the Case so submitted on behalf of the United

States, large claims have been included, which are understood on my part not to be within the province of the Arbitrators."

During the long controversy which followed this announcement, some of the British High Commissioners expressed themselves on the subject.

Sir Edward Thornton, in a speech delivered in New York on the 24th of April, 1872, said: "No one supposes that the British Commissioners ever had an idea that claims for indirect damages were included in the treaty."

Sir Stafford Northcote, in a speech delivered at Exeter on the 20th of May, 1872, said: "Two questions have been raised, one the personal question as to what was the understanding between the Commissioners at all events, and perhaps between the two Governments, at the time the treaty was concluded; the other, as to the general merits of the question which has been raised with regard to what are called consequential damages, or the indirect claims. Now with regard to the personal question, I will only say this, that we, the Commissioners, were dis-

tinctly responsible for having represented to the Government that we understood a promise to be given that these claims were not to be put forward, and were not to be submitted to arbitration. That being so, we are, of course, brought into painful relations with, and painful questions arise between ourselves and our American colleagues upon that Commission."

Subsequently, in a letter addressed to the Earl of Derby, dated June 5, 1872, he explained what he meant by this language thus: "It has been supposed — and you seem to have supposed — that I said that an understanding existed between the British and American negotiators that the claims for indirect losses should not be brought forward, and it has been inferred from this that we, relying upon that understanding, were less careful in framing the treaty than we should otherwise have been. This is incorrect. What I said was, that we had represented to our Government that we understood a promise to have been given that no claims for indirect losses should be brought for-

ward. In so saying, I referred to the statement voluntarily and formally made by the American Commissioners at the opening of the conference of the 8th of March, which I, for one, understood to amount to an engagement that the claims in question should not be put forward in the event of a treaty being agreed on."

The Marquess of Ripon, in the House of Lords, on the 4th of June, 1872, said: "My Lords, there seems to have got abroad an opinion that Her Majesty's Commissioners at Washington last year relied on what has been described as a secret understanding, subsisting between them and the American Commissioners, that these indirect claims would not be brought forward. I should entirely agree with an opinion which I believe was expressed a day or two ago by a noble and learned lord who generally sits behind me (Lord Westbury), that if Her Majesty's Commissioners had been induced by any such understanding to employ language which in their judgment admitted these claims, they would be liable to just and severe blame. But I

distinctly deny on the part of those who were engaged in these negotiations that that was the case. We may have failed, or we may have succeeded in employing language which excludes these claims. I will not detain your lordships now by entering into any elaborate argument on that subject, so fully dealt with in the correspondence on the table ; but whether we failed or whether we succeeded, we were not induced to employ language which we considered would admit those claims by any consideration of that kind, which in this correspondence is described as a waiver. For what occurred? On the 8th of March, as referred to in the protocol, these claims were mentioned by the United States Commissioners, — mentioned in a manner which in substance is described in that protocol on your lordship's table, — and throughout the course of the subsequent negotiations these claims were not again brought forward. We took note, and we recorded the waiver, as we held it to be, of these claims, on the 8th of March."

Lord Granville also on the same day

said in the House of Lords: "On a particular day — I forget precisely which — we received a simple statement from the British Commissioners that the American Commissioners had waived the indirect claims. The other fact upon which Her Majesty's Government grounded their belief is 'the protocol.' It appears to me clear as the day that the indirect claims were waived by that protocol."

It thus appears that Sir Stafford Northcote and Sir Edward Thornton agree in saying that the British Commissioners understood that the claims were not included in the treaty. Sir Stafford Northcote further states that the British Commissioners understood that the American Commissioners, by a formal written paper, engaged not to put forward the claims in question in the event of a treaty being made. Lord Ripon asserts, as a matter of fact, that the claims were not brought forward in the negotiations after the 8th of March. From all which, taken in connection with the Queen's speech, it is clear that the British Government and

its Commissioners at Washington made no claim that there were verbal assurances or statements which could be construed into a promise or understanding respecting the indirect claims, or any other promise, except what was contained in the written paper read on the 8th of March. There was, in fact, no such promise.

I have already shown, by contemporaneous proof, that, again and again after the 8th of March, the American Commissioners urged the claims for the prolongation of the war upon the consideration of their British colleagues in the joint conferences, without any intimation on the part of those colleagues that they regarded the matter as disposed of by a previous promise. This would seem to answer Sir Stafford's assertion that he and his colleagues regarded the claims as disposed of by the written paper read by Mr. Fish on the 8th of March. It also meets the assertions by Lord Granville and Lord Ripon that that paper was intended to operate as a waiver of those claims, and Lord Ripon's averment that the claims

were not brought forward after the 8th of March.

I say this without intending to imply, for one moment, that either of these gentlemen made a statement in the absolute truth of which he had not full confidence; on the contrary, I know that they were, each and all, incapable of setting their names to a statement which they knew to be incorrect.

And yet the fact remains that, in a moment of excited controversy, they entirely forgot a most important part of the negotiation, which was in part evidenced by a writing, made and communicated to them at the time, in direct conflict with their statements.

Mr. Fish could have met the British contention by producing this statement, read by the American Commissioners on the 13th of April; but I think all will agree that it was much wiser to withhold it, and to raise no personal issues at a time when passion needed to be allayed rather than excited. After the lapse of twenty years, when the strong feeling of that day has passed away, there can be no indiscretion in making it public.

The treaty provided that the Countercases should be exchanged at Geneva in April, 1872. By arrangement this was done by the Agents and the Secretary, without the presence of the Arbitrators. The discussion upon the extent of the submission was then going on actively between the two Governments. Lord Tenterden met me in a spirit of unreserve, and, while carrying out the instructions of his Government by filing a notice of its action in that respect, he did not conceal his own strong desire to save the treaty.

After disclaiming on each side the right to speak officially, and after asserting that what each might say to the other was purely personal, and after considering various plans for overcoming the dead-lock which had arisen, Lord Tenterden proposed, and I agreed to it, that we should each write unofficially to our chiefs at home, suggesting whether it might not be possible "to have the Arbitrators come together of their own motion before the 15th of June, for the avowed purpose of considering, in ad-

vance of argument, the general question of liability for indirect damages." I so wrote to Mr. Fish, and I presume he did the same to Lord Granville.

When we parted, it was with the conviction on my part, which I feel confident he shared, that should the two Governments be unable to agree, the treaty could be saved by a judicial solution of the political difficulty like that which the Tribunal of Arbitration subsequently made.

Two months later all met at Geneva, on the 15th of June, pursuant to the treaty. On the morning of that day, before the opening of the conference, Mr. Adams asked me to see Lord Tenterden, and obtain his consent for an examination by the Tribunal into the merits of the direct claims, leaving the disputed question of jurisdiction over the indirect claims to be arranged between the two Governments.

I answered that I could not believe that Tenterden would consent to go into an inquiry as to the merits of any claims before the filing of the British argument,

but that I would make the suggestion to him. I added that in my judgment, if the Arbitrators were satisfied that our position as to their jurisdiction over the indirect claims was sound, and if they agreed that those claims should be rejected, as I imagined they did, they could take the bull by the horns, and pass upon them in advance of the adjudications upon the direct claims.

Mr. Adams replied that in his opinion the indirect claims were within the scope of the treaty, and that perhaps that would be the best way of cutting the knot.

A conference of the Tribunal was then held, as provided by the treaty. Our argument was filed; but the British agent, instead of filing the argument on the part of Great Britain, applied for an adjournment of eight months. This we opposed, and, on my motion, the Tribunal adjourned to meet two days later, on the 17th.

Immediately after that adjournment, and while still in the conference-room, Viscount d' Itajuba made to me the same request which Mr. Adams had made with regard to my seeing Lord Tenterden,

and asking him to agree to go on with the direct claims. He said that, if a further and long adjournment were taken, the Arbitrators would be put to great inconvenience.

I answered that I was very sorry at the position of things, but that the difficulty was not of our making; that I would carry his message to Lord Tenterden, but could hold out little hope that he would adopt the suggestion; and that, in my opinion, the Arbitrators should take up the indirect claims and pass upon them while this motion was pending.

That evening I saw Lord Tenterden, and told him what had taken place between me and Mr. Adams and the Brazilian arbitrator. He said that he had no authority to entertain a proposition to go on with the examination into the direct claims, and he must frankly say that he did not think that his Government would permit it. He added: "What does Mr. Adams want? If he means business he must go further. He must have the indirect claims rejected." About midnight he came to me to say that he

had told Sir Roundell Palmer what had passed between him and me, and that Sir Roundell had made a minute of some points which would have to be borne in mind, should the Arbitrators do as suggested. He was not at liberty to communicate these points to me officially; but, if I chose to write them down from his dictation, he would state them. I wrote them down from his dictation, and, early the next morning, convened a meeting of the counsel, and laid the whole matter before them.

They met Sir Roundell's points by counter-points. It is sufficient for my purpose here to say that both sides contemplated an expression of opinion by the Tribunal on the indirect claims, and that each conceded that such an expression, if made at that time, would be extra-judicial.

Having gone thus far towards harmonizing opposing views, the agent and one of the American counsel, on behalf of all, communicated to Mr. Adams, on the morning of the 16th, what had taken place. They told him that we all felt

that a long adjournment would result in a rupture, and that we all thought that the way now suggested was the only way to save the treaty. He said that he was of the same opinion, and that he would see Count Sclopis and ascertain whether the desired action would be taken by the Tribunal.

In the afternoon of the same day Mr. Adams, having meanwhile seen Count Sclopis, brought a draft of a proposed declaration for consideration. This was carefully considered by us, and was, on the following morning (the 17th), returned to Mr. Adams with amendments. About two hours later he informed us that Count Sclopis agreed to the plan. Then the official meeting of the Tribunal took place pursuant to adjournment. On my motion, supported by Lord Tenterden, another adjournment was made to the 19th of June.

On the 18th we were informed that the Arbitrators were ready to make the desired declaration, but that they wished the concurrence of both sides as to its form. Negotiations followed which re-

sulted in a substantial agreement. When the Tribunal met on the 19th pursuant to adjournment, they announced that they had arrived individually and collectively at the conclusion that the claims known as the indirect claims did not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations, and should, upon such principles, be wholly excluded from the consideration of the Tribunal in making its award, even if there were no disagreement between the two Governments as to the competency of the Tribunal to decide thereupon.

When this announcement was made I was obliged to say that I was not in a position to give the assent of my Government. I had telegraphed everything fully to Mr. Fish, but the telegrams being in cipher, something had gone wrong, and I was obliged to ask for further delay. This was granted; and on the 25th of June I officially announced that the declaration of the Arbitrators was "accepted by the President of the United

States as determinative of their judgment upon the important question of public law involved." On the 27th the British agent applied for leave to file his argument, the American agent consented to it, the argument was filed, and the difficulty was over.

The trial of the questions submitted to the judgment of the Arbitrators then moved on regularly to the result which is well known. Great Britain was found liable for the acts of the Alabama and of the Florida, and for those of the Shenandoah which took place after she left Melbourne: and the Tribunal estimated the aggregate of these damages at $15,500,000.

The proceedings in the arbitration which I have endeavored to describe took place during a bitterly contested Presidential election, in which the Republicans, with General Grant, Mr. Fish, and their friends, were on one side, and the Democrats and seceding Republicans, with Mr. Sumner and his friends, were on the other side. I arrived in New York from

Geneva just after the election was over. On landing I found awaiting me a personal letter from the Secretary of State. I close the account of the doings at Geneva with an extract from it. "A few days will bring you home. My object in writing now is, to welcome you on your arrival, and to congratulate you on the completion of your arduous, highly honorable, and eminently successful labors.

"It has perhaps been unfortunate for the treaty, and especially for the arbitration at Geneva, that the latter occurred during the pendency of a Presidential election, which overshadowed all other questions, and drew within the vortex of its ill passions, calumnies, and misrepresentation everything with which the Government, through any of its agents, was engaged. You and your work have been the objects of especially malicious and unpatriotic aspersions; but you have the approval of the right-thinking part of the community, and of the President, who has desired me to write, so that it may meet you on your arrival, to

say that your management of the Case before the Geneva Tribunal and your conduct there meet his warmest approval."

I have dwelt on the subject of this negotiation and the arbitration which followed it, at perhaps too great length, because I wish to make clear how pernicious in their influence were the doctrines urged in Mr. Sumner's speech of April, 1869, with so much force of rhetoric and oratory. The unsound canon of international law touching the rights of a neutral led Motley to a disobedience of instructions, which resulted in his recall. The gigantic claims for indemnity for a breach of that unsound canon, coming from the Chairman of the Senate Committee on Foreign Relations, would, if not overruled, have been dangerous to the United States as a neutral in the future. These claims were also a stumbling-block in the way of the negotiation of the Treaty of Washington, which nearly proved fatal. Until removed from the contest by the voluntary act of the

Tribunal of Arbitration at Geneva, they further threatened to break up that treaty and leave the two Powers face to face, with the consequences of such an act.

Fortunately for the country, the temperate, firm, and judicious conduct of the diplomatic negotiations by the Secretary of State, throughout these stirring times, not only overcame the difficulties, but secured the vindication of the United States and their protection in the future, by the final judgment at Geneva.

APPENDIX.

I.

MR. SUMNER, THE ALABAMA CLAIMS AND THEIR SETTLEMENT. A LETTER PRINTED IN THE "NEW YORK HERALD" OF JANUARY 4, 1878.

To the Editor of the Herald:—

I avail myself of your courtesy to state a few facts concerning Mr. Sumner's connection with the Alabama Claims and their settlement, some of which, I apprehend, are not generally known. The subject is no longer connected with the politics of the day, but has passed into history. There would, therefore, seem to be no indiscretion in making public all the facts bearing upon it. To that end I make this contribution.

When General Grant became President, Mr. Reverdy Johnson's "Claims-Convention" was pending in the Senate. Mr. Sumner more than once expressed the opinion that had that treaty been acted on six months earlier it would have been accepted. When it came up for consideration in the second week of April, 1869, sentiment had grown up in the country hostile to it, and it was rejected. In the deliberations upon it Mr. Sumner set forth at length his views of the policy to be pursued in future negotiations with England for the settlement of the Alabama Claims. Lest I should be supposed to misrepresent the doctrines of this speech, which was the beginning of the differences between Mr. Sumner and the Administration, I quote from it. Under the heading "The Case against England" he said: —

"At three different stages the British Government is compromised: *first, in the concession of ocean belligerency, on which all depended;* secondly, in the negligence which allowed the evasion of the ship in order to enter upon the hostile ex-

pedition for which she was built, manned, armed, and equipped; and, thirdly, in the open complicity which, after the evasion, gave her welcome, hospitality, and supplies in British ports. Thus her depredations and burnings, making the ocean blaze, all proceeded from England, *which by three different acts lighted the torch.* To England must be traced the widespread consequences which ensued."

What those widespread consequences were he set forth in detail under the heading "The Extent of Our Losses." He estimated "the loss sustained by the capture and burning of American vessels" at "about $15,000,000." The loss in the carrying trade he put at $110,000,000, on the authority of "a statistician." Then he said that, large as these losses were, there was another chapter where they were larger far, — "the national losses caused by the prolongation of the war, and traceable directly to England," and he clinched the statement by saying, "If through British intervention the war was *doubled in du-*

ration or in any way extended, as cannot be doubted, then is England justly responsible for the additional expenditure to which our country was doomed;" and he stated the cost of the suppression of the Rebellion at $4,000,000,000, thus leaving the calculation of this item plain to the youngest schoolboy.

It is not necessary to waste words to prove that such a doctrine, if supported by the Administration, would have shut the door against future negotiation; for it was manifestly for England's advantage to incur the risk of a war with the United States rather than adjust the Alabama Claims by the admission of such a pretension. It may also reasonably be supposed that a statesman of Mr. Sumner's experience must have foreseen that England would so regard it, and must have intended to put a stop to all negotiations.

This speech was delivered and made public without consultation with the President and the Secretary of State, and was as much a surprise to them as to anybody. Nevertheless, from the inti-

mate relations between the Secretary of State and the senator, the world would probably have assumed, and would have been justified in assuming, that the latter had spoken by authority. The Administration was therefore forced at once to decide what should be its attitude toward England on that question. This was all the more important since, before the speech was delivered, it had been decided, on Mr. Sumner's request, to send Mr. Motley to England.

It is no disparagement to Mr. Motley to say that, but for Mr. Sumner's influence, he probably would not have been selected for this responsible post.

The President and Mr. Fish agreed with Mr. Sumner that the British proclamation of belligerency was hasty, unnecessary, and not justified by facts. Unlike him, however, they regarded it as an act unquestionably within the competence of an independent political power, which might (had the condition of this country at the time made such course expedient) have been treated as a cause of war. Not having been thus treated

at the time of its issue, it was, in their judgment, to be referred to, in any subsequent proceedings which might take place, only as showing the animus of the conduct of Great Britain during the war. So far from thinking it advisable to shut the door against negotiation, Mr. Fish, in those early weeks of the Administration, had sketched out in his own mind, and had put upon paper, the outlines of the scheme of settlement which two years later was carried into effect.

Mr. Sumner was much disturbed by this attitude of the Administration. He had frequent and prolonged interviews with the Secretary of State at his house. I remember, too, that he talked with me on the subject, and spoke feelingly of his own services and of his position in the Senate, and that he seemed to regard the non-acceptance of his views as a "sacrifice" of him by the Administration.

The draft of Motley's instructions was prepared by Mr. Fish in accordance with his own views, and when prepared received the approval of the President and

of the Cabinet. Mr. Sumner came to the Department (a thing he did only four or five times during Mr. Fish's secretaryship) for the purpose of reading this draft. It did not please him. In a long and animated conversation, in the course of which he said that Motley should resign rather than execute such instructions, he endeavored to have them modified so as to be more in accordance with his own views. He wrote a paragraph which he proposed to have substituted for a paragraph in the draft. Mr. Fish could not accept it. The next day he sent another form which he desired to substitute for the same paragraph. This Mr. Fish, with the President's approval, adopted in part, after carefully eliminating from it all trace of the objectionable doctrine about the British proclamation.

Mr. Sumner, however, was not content with this. The instructions, although dated on the 15th, were actually engrossed on the 17th of May. On the latter day Mr. Sumner withdrew his second sketch by a note, in which he said:

"As Chairman of the Senate Committee, I ought not in any way to be a party to a statement which abandons or enfeebles any of the just grounds of my country as already expounded by Seward, Adams, and myself. As you were kind enough to give me an opportunity of expressing an opinion, I owe it to frankness to declare my dissent from the course proposed. I do this in all kindness, and only under a sense of duty. I regret that Mr. Motley's own programme has not been adopted. . . . I wish he were allowed to speak according to his own enlightened discretion."

The passages in these instructions to which Mr. Sumner made this objection and protest were the following: —

"The President recognizes the right of every Power, when a civil conflict has arisen within another state, and has attained a sufficient complexity, magnitude, and completeness, to define its own relations and those of its citizens and subjects toward the parties to the conflict, so far as their rights and interests are necessarily affected by the conflict.

"The necessity and the propriety of the original concession of belligerency by Great Britain at the time it was made have been contested and are not admitted. They certainly are questionable, but the President regards that concession as a part of the case only so far as it shows the beginning and the animus of that course of conduct which resulted so disastrously to the United States. It is important in that it foreshadows subsequent events.

"There were other Powers that were contemporaneous with England in similar concession, but it was in England only that the concession was supplemented by acts causing direct damage to the United States. The President is careful to make this discrimination, because he is anxious as much as possible to simplify the case and bring into view these subsequent acts which are so important in determining the question between the two countries.

"You will, therefore, be pleased in your social and private intercourse and conversation, as well as when it becomes

necessary in your official conversation and intercourse, to adopt this view of the issuance of the declaration of neutrality by Great Britain and the other Powers, and to place the cause of grievance against Great Britain, not so much upon the issuance of her recognition of the insurgents' state of war, but upon her conduct under and subsequent to such recognition. And it is desirable that you avail yourself of early and suitable occasion, in your social intercourse with the representatives of other Powers which made similar recognition, to let them understand the position of this Government on that question, and that the United States make such recognition by them no ground of complaint."

After Motley's official reception by the Queen, he sought an early interview with Lord Clarendon, to communicate to him verbally the views of the new Administration. We are concerned only with what he said about the concession of belligerency. In his report to the Secretary of State he says, on this point:

"I then stated the opinion of the

President in regard to the recognition or concession of belligerency, as stated in your No. 3, saying that the President recognized the right of a sovereign Power to issue proclamations of neutrality between an insurgent portion of a nation and the lawful government, when such insurrection should have gained the necessary magnitude, consistency, extent of organized power, and probability of justification by success; *but that such measures must always be taken with a full view of the grave responsibilities assumed.*

"The famous proclamation of neutrality of May 13, 1861, was not considered justifiable by the United States Government, but the President wished it to be used, when our case should once more be presented, only as showing animus, *and as being the fountain head of the disasters which had been caused to the American people,* both individually and collectively, by the hands of Englishmen.

"Other nations had issued proclamations contemporaneously, or nearly so,

with that of Great Britain; but from Great Britain alone had there come a long series of deeds, injurious to the United States, *as the fruits of the proclamation*, while from other nations there had come no injury save the declaration itself."

The passages which I have italicized show how ingeniously Motley contrived to inject into his speech to Lord Clarendon the ideas which Mr. Fish had carefully eliminated from the instructions. He had, in fact, in the language of Mr. Sumner's protest of the 17th of May, adopted his own "programme" in the place of Mr. Fish's, and spoken according "to his own enlightened discretion," instead of according to his instructions.

The President's first impulse on reading the dispatch was to recall him. The Secretary of State was averse to this course. It did not appear by Motley's report that anything in writing had passed between the legation and the Foreign Office. Mr. Fish was therefore of opinion that no harm had been done which could not be rectified by

speaking to the British Minister at Washington. He thought that by withdrawing all negotiations on this subject from London, Motley could be safely left there temporarily, subject to recall whenever it might be desirable to intrust a Minister there with discretion as to the Alabama Claims. It appeared to him politic to pursue this course rather than subject a new Administration, which had yet to win the confidence of the country, to the scandal of recalling its diplomatic agent at the most conspicuous post, within two months of his arrival there, for disobedience of instructions upon the most important question then pending with a foreign Government. He remembered also Mr. Sumner's deep personal interest in Mr. Motley, and he wished to avoid every avoidable cause or possible excuse for estrangement of Mr. Sumner from the Administration.

The President deferred to Mr. Fish's opinion, and Motley was instructed as follows on the 28th of June, 1869: —

"Your general presentation and treatment of the several subjects discussed

in that interview meet the approval of this Department.

"In the course of the conversation, however, it seems that the President's view of the right of every Power, when a civil conflict has arisen within another state, to define its own relations and those of its citizens, was not conveyed in precise conformity to that view, as I desired to present it to you, and as it would doubtless have been conveyed by you had your communication been made in writing.

"The subject may not again be a topic of official communication between yourself and the Minister of Foreign Affairs, but I venture to call your attention to it, because of the statement in your dispatch that Lord Clarendon replied to that part of your remarks by saying that 'if there was to be any discussion of principles, it had better be done thoroughly and to the bottom.' The President recognizes the importance of a thorough discussion (whenever the subject is resumed) upon all the points of difference. He wishes that whenever

negotiations or discussion on the subject of the 'Alabama Claims' (so called) shall be renewed they be conducted in the United States; and he desires that at the proper time you should convey this wish to the Minister of Foreign Affairs. It is impossible to say at present when that time will arrive, but it will certainly have arrived whenever the British Government shall propose a discussion, or shall intimate a desire to reopen the negotiation.

"In the mean time you may be well content to rest the question on the very forcible presentation you have made of the American side of the question. It was strongly done, and if there were expressions used stronger than were required by your instructions, the excess was in the right direction, and stopping where they do, and uttered as they were, it may well be hoped that they may tend to impress the Minister with the seriousness of our appreciation of the grievances we have sustained."

Motley acknowledged the receipt of these instructions on the 15th of July,

1869, and did not deny that he had exceeded the limit of his instructions by presenting to Lord Clarendon views about the British proclamation which were not those of the President and Secretary of State.

It soon turned out that Mr. Fish had been mistaken in supposing that no written statement by Mr. Motley of the views of the new Administration about the Alabama Claims had been in Lord Clarendon's hands. On the 30th of July, 1869, nearly seven weeks after the interview had taken place, and more than a month after the date of the letter carrying to him the criticism of the Government on his statement, and withdrawing from him all further discussion of the Alabama Claims, Mr. Motley wrote thus to Mr. Fish:—

"I find that I have inadvertently omitted, until now, to inform you that my dispatch No. 8, of June 12, containing a minute record of an official interview with Lord Clarendon, was confidentially submitted by me to his lordship, in order that there might be no misunderstanding

at any future day as to the accuracy of the report of our conversation.

"I accordingly beg now to say that he quite concurred in the fidelity of the statements of the dispatch as sent to you. I have also to add that the dispatch was seen by nobody but Lord Clarendon himself, and that no extract from it was made."

As soon as this paper was brought to Mr. Fish's notice, which was not until the following October, he at once laid it before the President, who thereupon directed him to recall Motley on the spot. Mr. Fish, however, influenced by the same considerations as before, succeeded in obtaining postponement and delay, with authority in the mean time to send the following instruction, which was dated October 11, 1869: —

"When, on the 28th of June last, I answered your No. 8, in which you gave a highly interesting account of your interview with Lord Clarendon, and of the views which you there presented to him as the views entertained by the President upon the subjects of the recognition

of the late insurgents in the Southern States as belligerents, and the destruction of American commerce by cruisers of British origin carrying the insurgent flag, I was not aware that your statement of the conversation had been submitted to his lordship for his verification. Your No. 65, of the 30th of July last, first acquainting the Department with that fact, arrived here on the morning of a day on which I was about to leave Washington for a temporary absence, and through inadvertence the fact escaped my notice.

"As, without an explanation, his lordship may naturally be surprised at finding some of the views, purporting to come from the President, which are contained in the written paper submitted by you in June last, inconsistent with the views contained in the paper dated the 25th of September last, which you were instructed to read to him, I must ask you to explain to him that your presentation and treatment of the subject discussed at that interview were in part disapproved by me in my communication of the 28th

of June last, to which I have already referred. This you may do by reading to him such portion of the instructions contained in my No. 23, of the 28th of June last, as referred thereto, or by stating to him the substance of such part of that note, or by a note containing the substance of that part of my note, at your discretion."

Mr. Fish took no exception to the manner in which Mr. Motley complied with these directions. From that time forward the subject of his disobedience of instructions remained in abeyance until revived in the closing correspondence between him and the Secretary. After the receipt, on the 23d of June, 1869, of his account of his first interview with Lord Clarendon, he was intrusted with nothing important affecting the Alabama Claims, except to read a formal paper of Mr. Fish's of the 25th of September, 1869, and to leave a copy of it at the Foreign Office.

He did not, however, cease to occupy himself unofficially with these claims. Late in the autumn of 1869, an English

gentleman of the best position in politics, of high personal character, and a very good friend to Mr. Motley, wrote, in language most kind and in spirit friendly to that gentleman, a letter to Mr. Fish, expressing fear and regret that Mr. Motley's bearing in his social intercourse was throwing obstacles in the way of a future settlement. Mr. Fish informed Mr. Sumner of the purport of the information; but he saw fit to regard this friendly expostulation as the communication of an enemy, and said it was only a repetition of the "McCracken" letters. Under the circumstances, Mr. Fish felt unwilling to push an inquiry which might seem to imply a willingness to censure, and thought it better to submit for a while to misrepresentation at London, rather than increase the differences between Mr. Sumner and the Administration.

It was after the events which I have described, and before the formal recall of Motley, that the treaty for the annexation of St. Domingo was brought to Washington and came to Mr. Sumner's

knowledge. On the 31st of December, 1869, the President went to Sumner's house to talk with him on the subject. It is well known that the former was cordially favoring the movement, and that he regarded the acquisition of the island as an important feature of his foreign policy. The President and others who were present left Mr. Sumner's house that night under the impression that the senator had expressed his approval of the measure and the intention to support it. It was not long, however, before he was seen to be against it. Hostility to the measure soon changed into hostility to the promoters of it. Bitter and exasperating remarks upon the President and his friends put an end to possibility of intercourse between General Grant and Mr. Sumner, and undoubtedly accelerated the breach between the latter and Mr. Fish. On the 30th of June, 1870, the treaty — the eventual defeat of which had been evident for months — was formally rejected. On the 1st day of July, 1870, Motley was asked to resign. He refused, and

was thereupon removed, and the Senate approved the nomination of his successor without serious opposition.

It would be useless to enter into a controversy whether the President may or may not have been influenced in the final determination of the moment for requesting Motley's resignation, by the feeling caused by Sumner's personal hostility and personal abuse of himself. He had already determined upon the removal as far back as October, 1869. Motley no longer enjoyed the official confidence of the Secretary of State. He was worse than useless in London should the desired resumption of negotiations take place. He had been retained in office after a great breach of duty only at the request of the Secretary of State, — a request made partly in the hope of eventually gaining Sumner's support to the English policy, partly in the desire of not offending him, and, in my judgment, in no small degree from the high personal regard which the Secretary had for Motley. The Secretary also had been most anxious to restore

personal friendly relations between the President and Mr. Sumner. Now, however, the hostile attitude of the senator to the President showed that he had made up his mind to have no terms with the Administration. Whatever injury and scandal could come from a public quarrel had already come, and as the recent death of Lord Clarendon seemed to open the way for the possible renewal of negotiations, Mr. Fish withdrew his opposition to the change in the London mission.

This took place in July, 1870, but Motley did not leave the mission until the 6th day of the following December. On the 5th of January, 1871, the Senate made a call upon the President for the correspondence respecting Motley's recall. On the 9th of the same January the call was answered by transmitting to the Senate a mass of correspondence. The day before it appeared in print, a gentleman enjoying the entire confidence of Lord Granville arrived in Washington on a semi-official mission to inquire whether a basis could not be

found for reopening negotiations to adjust the troublesome questions pending between the two Governments. I expose no secret when I say that this was not the first time that he had been in Washington since General Grant's advent to the Presidency. But it is not so well known that, shortly after the rejection of the Johnson-Clarendon Treaty, Mr. Fish had indicated to him a possible solution of the pending differences in almost the identical manner in which it finally resulted, and that from thence on a confidential correspondence had been maintained by Mr. Fish with him. In a few days after his arrival he had proceeded far enough with the business to satisfy Mr. Fish that there was a fair opportunity to conclude a satisfactory treaty, if there were reasonable hope that it would receive the assent of the Senate.

More than once Mr. Fish, as Secretary, showed himself disposed to give force to the word "advice," as well as the word "consent," in the clause which makes the Senate coördinate with the Executive in the negotiation of treaties.

It was, therefore, in accord with his conduct as well as his convictions when he determined to ascertain the opinion of the Committee on Foreign Relations, before agreeing to enter upon formal negotiations with Great Britain on the proposed basis. The correspondence about Mr. Motley's retirement had just appeared, and Mr. Fish had been informed of severe and personal remarks by Mr. Sumner in consequence of it. Indeed, the style of Mr. Sumner's criticism on Mr. Fish, during that summer and autumn, was no secret, and one leading Republican senator went so far as to urge Mr. Fish not to let it make a breach until one could not be avoided. Mr. Fish, therefore, thought it proper, before seeking an interview with the senator, to ascertain whether he would be treated civilly. Mr. Patterson, of New Hampshire, also a member of the committee, was to that end informed of the purport of the semi-official proposals, and was requested to communicate with Mr. Sumner. After consulting with him, Mr. Patterson answered thus: —

UNITED STATES SENATE CHAMBER,
WASHINGTON, *January* 12, 1871.

MY DEAR SECRETARY, — I have had a long talk with Mr. Sumner this morning, and find him in better mood than I anticipated; and he will receive you kindly, should you call on him. I have given him enough of what you communicated to me last evening to make him hungry for more. Mr. Sumner said he could never feel or say anything unkindly of you, as your friendship had a standing of twenty years. He does, however, condescend to feel a little pity that one so well inclined by nature should have allowed himself to have drifted into a support of what he deems the President's bloody lawsuit with San Domingo, or rather Hayti. He has not yet read your reply to Mr. Motley, and will not for several days; and, therefore, holds his judgment in reserve on that issue. On the whole, Mr. Sumner will be glad to see you, and enter into the question which you have in hand.

With great respect, I am your obedient servant, J. W. PATTERSON.

This letter was received on January 13. On the morning of the 15th Mr. Fish went to Mr. Sumner's house. He was cordially received by the senator, and presented to him in detail the whole ground of the pending negotiations and the proposals there made. Mr. Sumner said that they would require much reflection, and that he was not ready to give an answer. After some delay, he promised to reply at an early day. He repeated to Mr. Fish what he had said to Mr. Patterson, — that he had not yet read the Motley correspondence; and he accompanied his guest to the door, and shook his hand warmly at parting.

The British proposals related to the fisheries and the disputed boundary as well as the Alabama Claims. Sumner's answer was given in writing on the 17th of January: —

Memorandum for Mr. Fish, in Reply to His Inquiries.

First. — The idea of Sir John Rose is that all questions and causes of irritation between England and the United States

should be removed absolutely and forever, that we may be at peace really, and good neighbors, and to this end all points of differences should be considered together. Nothing could be better than this initial idea. It should be the starting-point.

Second. — The greatest trouble, if not peril, being a constant source of anxiety and disturbance, is from Fenianism, which is excited by the proximity of the British flag in Canada. Therefore the withdrawal of the British flag cannot be abandoned as a condition or preliminary of such a settlement as is now proposed. To make the settlement complete, the withdrawal should be from this hemisphere, including provinces and islands.

Third. — No proposition for a joint commission can be accepted unless the terms of submission are such as to leave no reasonable doubt of a favorable result. There must not be another failure.

Fourth. — A discrimination in favor of claims arising from the depredations of any particular ship will dishonor the claims arising from the depredations of

other ships, which the American Government cannot afford to do; nor should the English Government expect it, if they would sincerely remove all occasions of difference. C. S.

January 17, 1871.

Like Mr. Sumner's speech in April, 1869, this remarkable document would have shut the door to all settlement, had it been listened to. To a suggestion that we should negotiate for the settlement of our disputed boundary and of the fisheries, it proposed to answer that we would negotiate only on condition that Great Britain would first abandon the whole subject of the proposed negotiation. I well remember Mr. Fish's astonishment when he received this document. At first he almost thought any attempt at negotiation would prove futile; but, confident in the course he had marked out, and encouraged by senators who knew what had taken place, he determined to go on, telling them, however, that it would be hopeless to do so while the Chairman of the Commit-

tee on Foreign Relations was opposed to negotiating on a practical basis. They replied that the Senate would not oppose a reasonable treaty, and was not disposed to shut the door to negotiations; and that if Mr. Fish would go on he might be assured that ways would be found for obtaining in the Senate a fair hearing for any results which might be reached.

With this assurance, the preliminary negotiations were continued. They lasted for some days longer. Each Power then appointed its plenipotentiaries for more formal negotiations. The British Commissioners arrived in New York on the 22d of February, 1871. On the 27th of February the united sessions of the Commissioners began at Washington, but they did not get to work on the Alabama Claims until the 8th day of the following March.

The Forty-first Congress expired on the 4th day of that March, and on the assembling of the Senate of the Forty-second Congress the election of its committees was, as usual, one of the first

pieces of business. At the outset there appeared on the part of leading Republicans, who knew the true state of the English question, a determination to organize the Committee on Foreign Relations with a new chairman. This was resisted by some who were less informed ; but on the 10th of March, two days after the negotiations upon the Alabama Claims had been opened in the Joint High Commission, the new organization was made, with Mr. Cameron, of Pennsylvania, as chairman. Although no senator has ever told me what induced the Senate to make the change, I had no doubt then, and have since seen no reason to doubt, that the substitution of Mr. Cameron for Mr. Sumner was the practical answer of the leading Republican members to the manifesto of the 17th of January. It would have been the height of indiscretion, in the then stage of negotiations in the Joint High Commission, to make that manifesto public, or to refer in any way to those negotiations. It was therefore said, in reply to persons asking a reason for the

change, that Mr. Sumner was not on speaking terms with the President and with Mr. Fish. This was regarded as, and was, a fully sufficient reason.

At or about the time the change took place, the President and Mr. Fish stated to more than one senator that the current business of the Department of State had been neglected in the Senate during the previous session; and particularly that no treaty which had been sent to the Senate during the session which followed Motley's recall had been acted on. The recent lifting of the veil from the doings of the Senate in executive session at that time shows that this charge is literally true.

By the custom of the Senate, treaties which have been reported from a committee, with a recommendation that the Senate advise their ratification, are regarded as in the charge of the chairman, unless reported by some other member. It is his business to move them forward and secure the Senate's action upon them. The unrevealed records of the Senate in executive session will show

whether Mr. Sumner made any attempt during that winter to secure the action of the Senate on these treaties. Mr. Cameron, within three weeks after his appointment, secured the assent of the Senate to all, and wrote Mr. Fish the following letter: —

UNITED STATES SENATE CHAMBER,
WASHINGTON, *March* 31, 1871.

HON. HAMILTON FISH, *Secretary of State, etc.*

SIR, — I have the honor to inform you that the Senate, in executive session, confirmed this day the following executive business:

1. Treaty of friendship, commerce, and navigation with Peru, of December 6, 1870, which has been lying in the Senate since December 8, 1870.

2. Extradition treaty with Peru, September 12, 1870, which has been before the Senate since December 6, 1870.

3. Extradition treaty with Guatemala, of October 11, 1870, lying over since December 6, 1870.

4. Extradition treaty with Nicaragua,

of June 5, 1870, lying here since December 6, 1870.

5. Treaty of amity, commerce, and consular privileges with Salvador, of December 6, 1870, lying here since January 9, 1871.

6. Treaty of friendship, commerce, and navigation with Uruguay, of December, 1870, lying here since January 27, 1871.

7. The protocol with Mexico of October 23, 1869 (to confirm the validity of Joint Commission on Claims), was laid aside as unnecessary, in the judgment of the Senate.

I have the honor to be, very respectfully, your obedient servant,

SIMON CAMERON,
Chairman Committee on Foreign Relations.

These treaties and protocol were all acted upon on the 31st of March. In addition to them, the naturalization convention with Austria-Hungary, laid before the Senate on the 12th of December, 1870, was assented to by the Senate March 22, 1871; and the convention

with Great Britain supplemental to the naturalization convention, submitted to the Senate February 28, 1871, was assented to March 22, 1871, thus making an aggregate of eight treaties which were sent to the Senate by the President during the session which followed Mr. Motley's removal, which were not acted upon during that session while Mr. Sumner was chairman of the committee, and which received the assent of the Senate shortly after Mr. Cameron was made chairman. Mr. Cameron also obtained at the same session the Senate's action on the Mexican protocol. The Secretary of State was himself of opinion with the Senate that the action of that body was not necessary, but it was thought desirable to have the Senate's decision upon the question.

In conclusion, I add to the foregoing narrative only the following general remarks: Mr. Motley's friends were (perhaps not unnaturally) indignant at his removal, and joined him in attributing it to Mr. Sumner's course toward the San Domingo Treaty. They insisted that a

scholar so brilliant, a citizen so distinguished, and a gentleman so genial and accomplished, should not have been displaced from a diplomatic service in which such qualifications do not predominate. In saying this, they apparently forgot that the more brilliant, the more distinguished, and the more attractive in social life an envoy is, the more dangerous he may be to his country when he breaks loose from his instructions and communicates socially to the world, and officially to the Government to which he is accredited, views opposed to those of his own Government.

The friends of Mr. Sumner were also indignant that he was not continued at the head of the Senate Committee. They said that his exalted character, his great experience, his distinguished abilities, and his long training preëminently fitted him for the post. They overlooked the fact that qualities like these made their possessor all the more objectionable in the eyes of conscientious opponents, who did not wish to shut the door against negotiations with England,

and who were not disposed to meet her peaceful advances by the assertion that, preliminary to all negotiations, the British flag must be removed from this hemisphere, including provinces and islands.

Neither Mr. Motley nor Mr. Sumner was the victim of a political intrigue about San Domingo. Other statesmen were put in their places because they disagreed with the Administration, and with a large majority of the Senate, about a question of foreign policy of the highest importance. It is true that two months and a half later Mr. Sumner accepted what he could not prevent, and gave his vote in favor of the Treaty of Washington; but on the 10th of March, 1871, the treaty did not exist, even in embryo. If the Washington Treaty ought to have been made, the changes in the mission to London, and in the chairmanship of the Senate Committee on Foreign Relations, were wise and necessary political measures. If, on the contrary, it ought not to have been made, the Administration which re-

moved Motley, and the Senate which failed to reëlect Sumner, will be condemned by history.

J. C. BANCROFT DAVIS.

January 3, 1878.

II.

EXTRACTS FROM THE PROTOCOLS OF THE CONFERENCES BETWEEN THE JOINT HIGH COMMISSIONERS, NEGOTIATING THE TREATY OF WASHINGTON.

XXXV.

PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *May* 3, 1871.

The High Commissioners having met, the protocol of the conference held on the 25th of April was read and confirmed. . . .

The Joint High Commissioners determined that they would embody in a protocol a statement containing an account of the negotiations upon the various subjects included in the treaty, and

they instructed the Joint Protocolists to prepare such an account in the order in which the subjects are to stand in the treaty.

The conference was adjourned to the 4th of May.

XXXVI.

PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *May* 4, 1871.

The High Commissioners having met, the protocol of the conference held on the 3d of May was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The Statement prepared by the Joint Protocolists, in accordance with the request of the Joint High Commissioners at the last conference, was then read as follows:—

STATEMENT.

ARTICLES I. TO XI.

At the conference held on the 8th of March the American Commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent Rebellion in the United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; that the history of the Alabama and other cruisers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels

with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the Rebellion; and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruisers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers; that in the hope of an amicable settlement no estimate was made of the indirect losses, without

prejudice, however, to the right to indemnification on their account in the event of no such settlement being made.

The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

The British Commissioners replied that Her Majesty's Government could not admit that Great Britain had failed to discharge toward the United States the duties imposed on her by the rules of international law, or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being

designed to cruise against the United States, including two ironclads, had been arrested or detained by the British Government, and that that Government had in some instances not confined itself to the discharge of international obligations, however widely construed, as, for instance, when it acquired at a great cost to the country the control of the Anglo-Chinese Flotilla, which, it was apprehended, might be used against the United States.

They added that although Great Britain had, from the beginning, disavowed any responsibility for the acts of the Alabama and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, provided that a fitting Arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American Commissioners, in the hope that the necessity

for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon.

The British Commissioners replied that they had no authority to agree to a submission of these claims to an Arbitrator with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the

Arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

The American Commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles that should be agreed upon should be held to be applicable to the facts in respect to the Alabama Claims.

The British Commissioners replied that they could not admit that there had been any violation of existing principles of international law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the Arbitrator, but that they would make known to their Government the views of the American Commissioners on the subject.

At the respective conferences on March 9, March 10, March 13, and March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted

for the instruction of the Arbitrator and laid down for observance by the two Governments in future.

At the close of the conference of the 14th of March, the British Commissioners reserved several questions for the consideration of their Government.

At the conference on the 5th of April the British Commissioners stated that they were instructed by Her Majesty's Government to declare that Her Majesty's Government could not assent to the proposed rules as a statement of principles of international law which were in force at the time when the Alabama Claims arose, but that her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the Arbitrator should assume that Her Majesty's Government had undertaken to act upon the principles set forth in the rules which the American Commissioners had proposed, viz. : —

That a neutral Government is bound, first, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable grounds to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly. To exercise due diligence in its own ports or waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

It being a condition of this undertaking that these obligations should in

future be held to be binding internationally between the two countries.

It was also settled that in deciding the matters submitted to him, the Arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as applicable to the case, and by such principles of international law, not inconsistent therewith, as the Arbitrator should determine to have been applicable to the case.

The Joint High Commission then proceeded to consider the form of submission and the manner of constituting a Tribunal of Arbitration.

At the conferences on the 6th, 8th, 9th, 10th, and 12th of April the Joint High Commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the Arbitrators.

The American Commissioners, referring to the hope which they had expressed on the 8th of March, inquired whether the British Commissioners were prepared to place upon record an expression of regret by Her Majesty's Govern-

ment for the depredations committed by the vessels whose acts were now under discussion ; and the British Commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels.

The American Commissioners accepted this expression of regret as very satisfactory to them and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

In the conference on the 13th of April the Treaty Articles I. to XI. were agreed to.

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